LIBRARY
SUPREME COURT, U. S.

Office-Supreme Ct., U.S.
FILED
MAR 8 1968
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1210

NISHAN PAUL,

Petitioner

vs.

DADE COUNTY, FLORIDA, a Political Subdivision of the State of Florida, et al.

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

ALFRED I. HOPKINS
Attorney for Petitioner
1701 Meridian Avenue,
Miami Beach

HOWARD J. HOLLANDER
BERNARD C. PESTCOE
Of Counsel
708 City Natl. Bank Bldg.
Miami, Fla.

INDEX

	Page
CITATIONS TO OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3, 4
STATEMENT OF THE CASE	4, 5, 6
HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW	6
REASONS FOR GRANTING THE WRIT	6, 7, 8, 9, 10, 11, 12, 13
I. THE LATIN CROSS IS A RELIGIOUS SYMBOL	9, 10
II. THE ERECTION AND DISPLAY OF A RELIGIOUS SYMBOL (LATIN CROSS) ON A PUBLIC BUILDING (DADE COUNTY COURTHOUSE) BY GOVERNMENTAL ORDER (DADE COUNTY BOARD OF COMMISSIONERS) WITH OR WITHOUT THE UTILIZATION OF TAX FUNDS VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS FORBIDDING GOVERNMENTAL ESTABLISHMENT OF RELIGION	11, 12, 13

INDEX (cont.)

	Page
III. DENIAL OF EQUAL PROTECTION OF THE LAWS	14
CONCLUSION	15
CERTIFICATE OF SERVICE	16
APPENDIX	App. 1

TABLE OF CASES

Page

Abington School District vs. Schempp,
374 U.S. 203 (1963) 8, 10, 13

Baer vs. Kolmorgen,
181 N.Y.S. 2d 230 8

Berghorn vs. Reorganized School District,
260 S.W. 2d 573 (1953) 8

Chamberlain vs. The Dade County Board of Public Instruction, (143 So.2d 21, 374 U.S. 487, 83 S.Ct. 1864, 160 So.2d 97, 377 U.S. 402, 84 S.Ct. 1272, 171 So.2d 535) 8

Cotting v. Godard,
183 U.S. 79, 46 L.Ed. 92, 22 S.Ct. 30 14

Engel vs. Vitale,
370 U.S. 421 (1962) 8, 11, 13, 14

Everson vs. Board of Education,
330 U.S. 1 (1947) 11, 14

Gerhardt, et al. vs. Heid, et al.
267 N.W. 127 (1936) 8

Hysong et al vs. School District of Gallitzin Borough, et al, (1894) 30 A. 481 ..... 7, 8

Knowlton vs. Baumhover, et al.,
166 N.W. 202 (1918) 8

Lowe vs. City of Eugene,
(Circuit Court—Case No. 76314) 9

TABLE OF CASES (cont.)

Page

McCollum vs. Board of Education,
333 U.S. 203 (1948) 13

Murray vs. Curlett,
374 U.S. 203 (1963) 8

O'Connor vs. Hendrick,
184 N.Y. 421, 77 N.E. 614 7

Torcaso vs. Watkins,
367 U.S. 488 (1961) 13

West Virginia State Board of Education vs. Barnette, 319 U.S. 624, 63 S.Ct. 1178 (1943) 10

Zellers vs. Huff,
236 P.2d, 949 (1951) 7

ENCYCLOPEDIC AND TEXT REFERENCES

New Catholic Encyclopedia,
Volume 4, Page 475 9

New Schaff-Herzog Encyclopedia of Religious Knowledge, (1909) Page 309 9

Signs and Symbols in Christian Art,
by George Ferguson, Page 295 ..... 9, 10

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. _____

NISHAN PAUL,

Petitioner

vs.

DADE COUNTY, FLORIDA, a Political Subdivision of the State of Florida, et al.

Respondent

PETITION FOR WRIT OF CERTIORARI

TO

THE SUPREME COURT OF FLORIDA
AND
THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the District Court of Appeal of Florida, Third District, and the denial of Petitioner's Petition for Writ of Certiorari by the Supreme Court of Florida, entered in the above styled case on October 3rd, 1967 and December 13th, 1967 respectively.

CITATIONS TO OPINIONS BELOW

The opinion of the Circuit Court is unreported but is printed in complete form in App. H attached hereto. The opinion of the District Court of Appeal is reported in 202 So.2d 833, and is reprinted in App. I attached hereto. The denial of the Petition for Writ of Certiorari filed in the Supreme Court of Florida is unreported, but is reprinted in complete form in App. J attached hereto.

JURISDICTION

The judgment of the District Court of Appeal was entered on October 3rd, 1967, and denial of Petitioner's Petition for Writ of Certiorari filed in the Supreme Court of Florida was entered on December 13th, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3), in that a right is claimed under the First and Fourteenth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED

1. Whether the Latin Cross erected on the Dade County Courthouse during December and January of each and every year is a religious symbol so as to bring it within the confines of the 1st and 14th Amendments.

2. Whether the erection and display of a religious symbol (the Latin Cross) on a public building (Dade County Courthouse) by governmental order (Dade County Board of Commissioners) with or without the utilization of tax funds is an abridgment of the First and Fourteenth

Amendments prohibiting the governmental establishment of religion.

3. Whether by governmental order, the erection and display of a particular religious symbol as opposed to other religious symbols or none at all on a public building is an abridgment of the Fourteenth Amendment providing for equal protection of the laws.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional amendments involved herein are provisions under the First and Fourteenth Amendments to the United States Constitution.

(1) First Amendment (in part)
"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof;"

(1) Fourteenth Amendment, Section 1 (in Part)
"No state shall make or enforce any law which shall abridge the privileges or immunities of citizenship of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(3) Portions of minutes of the Dade County Board of Commission meeting held on June 20th, 1966, ordering the appropriation of tax monies for the installation

of the Latin Cross in December, 1966 (certified copy in App. E attached hereto).

(4) Certified copies of the tentative 1967-1968 Budget as well as the official operating Budget of Dade County for the fiscal year commencing October 1st, 1967, and ending September 30th, 1968, adopted by the Board of County Commissioners at its meeting held on September 19th, 1967. (Certified copies in App. F & G attached hereto.)

STATEMENT OF THE CASE

Commencing with the year 1955, the Dade County Board of Commissioners has annually appropriated tax derived funds for Courthouse Christmas decorations including the sum of approximately $800.00 for the erection and maintenance of a Latin Cross covering several stories on the tallest building in Dade County, the Dade County Courthouse. The Latin Cross has been erected each year on the Dade County Courthouse, a public building, built and maintained with public taxes, during the month of December and removed sometime in January. The said Latin Cross is placed on the face of the building and lit up at night so that residents of the City would be able to see it from miles away. Please see App. A, B & C attached hereto containing exhibits 3, 4 and 5 entered into evidence during the course of the trial.

Despite the bitter controversy that this Latin Cross had created, as can be seen from the copies of newspaper articles reproduced in App. D attached hereto, the Dade County Board of Commissioners appropriated tax funds for the erection of the said Latin Cross in December of

1966, a certified copy of said minutes and legislative order attached to App. E hereto. The Petitioner, NISHAN PAUL, a non-Christian property owner and taxpayer in Dade County, Florida, protested said legislative order. The said protest was denied and on August 23rd, 1966, the Petitioner filed a suit for declaratory decree in the Circuit Court of Dade County, Florida requesting that the appropriation of tax funds for erection of a religious symbol on a public building be declared unconstitutional and, further, to temporarily and permanently enjoin Dade County from permitting the use of a public building for the display of a religious symbol with or without the utilization of tax dollars for the actual cost of erection.

The cause was tried on November 15th, 1966, whereupon the Circuit Court denied relief to the Petitioner. (App. H). An Order denying Plaintiff's Petition for Rehearing was entered on December 6th, 1966. The Latin Cross was displayed in December, 1966, and the Petitioner appealed to the District Court of Appeal of Florida, Third District. On October 3rd, 1967, the District Court affirmed the Circuit Court. (App. I). The Petitioner filed a Petition for Writ of Certiorari in the Supreme Court of Florida, said Petition being denied on December 13th, 1967. (App. J).

Prior to the Petition for Writ of Certiorari filed in the Supreme Court of Florida, the Dade County Board of Commissioners appropriated the exact same sum for Christmas decorations in the 1967-1968 Budget as they did for the 1966-1967 Budget—$2,000.00, certified copies of the tentative and actual operating Budget for Dade County for 1967-1968 are attached in App. G hereto. The Petitioner filed a Motion to Enlarge the Record and/or

take Judicial Knowledge of this occurrence. The Supreme Court of Florida denied the Motion, and the Latin Cross was erected on the Dade County Courthouse during December, 1967, as it had appeared during December, 1966, and years prior.

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The Federal question was first raised in the Plaintiff's Complaint, and reiterated during the course of the trial. Petition for Re-hearing, Assignment of Errors and Brief to the District Court of Appeal, as well as Petition for Writ of Certiorari filed in the Supreme Court of Florida. All the foregoing Courts denied relief to the Petitioner raising the Federal question.

REASONS FOR GRANTING THE WRIT

The public importance attached to deciding the questions presented in this Petition can be viewed, in part, by perusal through the copies of newspaper articles reprinted within App. A, B & C hereto. Public controversy has been raging for years concerning the erection of the Latin Cross on the Dade County Courthouse each December. Each year the Commission, in addition to ordering the cross erected, has appropriated tax funds to finance the annual project. The Latin Cross, as can be seen from the photographs entered as exhibits during the course of the trial and included within the appendix hereto, is huge, covers several stories of the tallest building in Dade County, the Courthouse, and is lit at night so that the said cross will be seen from miles away. This continuous controversy has caused extreme bitterness within the com-

munity as the articles well indicate. Further, this controversy has received national and world wide notoriety. It is thus a matter of extreme importance not only to the Plaintiff in this cause to decide whether the oldest and most fundamental symbol of Christianity can be erected on a public building with or without public funds, but to the people of Dade County as well as the nation.

The question of religious symbols and garb, both on and within public buildings has created extreme animosity in various communities throughout our nation. The State Supreme Courts are in open conflict on this very point. The Supreme Court of New Mexico in **Zellers vs. Huff,** 236 P.2d. 949 (1951) held the wearing of religious garb by teachers in public schools unlawful saying

> "Not only does the wearing of religious garb and insignia have a propagandizing effect for the Church, but by its very nature it introduced sectarian religion into the school. If the Religious are again employed as teachers in our public schools they must not dress in Religious garb or wear religious emblems while in the discharge of their duties as such teachers"

This case was in direct conflict with the decision in **Hysong et al vs. School District of Gallitzin Borough, et al.** (1894) 30 A. 481, wherein the Supreme Court of Pennsylvania sanctioned the wearing of the habit and crucifix by the teachers in public schools.

The New York Court in **O'Connor vs. Hendrick,** 184 New York 421, 77 N.E. 614 disagreed with **Hysong** and agreed with **Zellers** saying that the garb would

"inspire respect if not sympathy" for the religious denomination.

The Supreme Court of North Dakota disagreed with the New York Court and New Mexico Court and adopted the **Hysong** view in the case of **Gerhardt, et al. vs. Heid** et al, 267 N.W. 127 (1936). The Supreme Court of Iowa in **Knowlton vs. Baumhover, et al,** 166 N.W. 202 (1918) disagreed with the Pennsylvania and North Dakota Supreme Courts and adopted the New York and New Mexico viewpoint when it followed the dissenting opinion in **Hysong** written by Judge J. Williams.

The controversy over religious symbols in and on public buildings has not stopped with the dispute over religious garb. In **Chamberlain vs. the Dade County Board of Public Instruction,** (143 So.2d 21, 374 U.S. 487, 83 S.Ct. 1864, 160 So.2d 97, 377 U.S. 402, 84 S.Ct. 1272 171 So.2d 535) Circuit Court Judge Fritz Gordon was affirmed by the Florida Supreme Court when he enjoined Christmas plays and motion pictures in public schools. This case subsequently went to the United States Supreme Court in 1964 which decided the issues of school prayer and Bible reading in conformity with **Abington School District vs. Schempp,** 374 U.S. 203 (1963), **Murray vs. Curlett,** 374 U.S. 203 (1963), and **Engel vs. Vitale,** 370 U.S. 421 (1962).

In **Baer vs. Kolmorgen,** 181 N.Y.S. 2d 230, the Court permitted a nativity scene on school property but in **Berghorn vs. Reorganized School District,** 260 S.W. 2d 573 (1953), the Court prohibited the appropriation of public funds to a public school, in part, because it was surmounted by a **cross.**

Most interesting of all to note is that just recently, Circuit Court Judge William Fort in Eugene, Oregon, ordered the removal of a 50 foot cross from a city park. **Lowe vs. City of Eugene** (Circuit Court—Case No. 76314).

Thus, religious symbols on and in public buildings have been a matter of public importance and extreme judicial conflict, as well as bitter controversy, and we submit this substantial federal question for judicial review.

I. THE LATIN CROSS IS A RELIGIOUS SYMBOL.

The District Court of Appeal Opinion affirming the Circuit Court found that the Latin Cross exhibited in App. I hereto is not a religious symbol. In view of the following authorities, we believe that the Opinion of the District Court is grossly in error. The **New Catholic Encyclopedia** states in Volume 4, Page 475

> "The cross is beyond doubt the widest used of all Christian signs."

The New Schaff-Herzog Encyclopedia of Religious Knowledge (1909) states on page 309

> "Its historical association and its connection with the salvation of man made the cross the emblem of Christianity from the beginning."

It is stated on Page 295 of George Ferguson's **Signs and Symbols in Christian Art,**

> "The cross is one of the oldest and most uni-

> versal of all symbols. It is, of course, the perfect symbol of Christ because of His sacrifice upon the Cross. In a broader sense, however, the cross has become the mark or sign of the Christian religion, the emblem of atonement, and the symbol of salvation and redemption through Christianity."

Finally, the United States Supreme Court stated in **West Virginia State Board of Education vs. Barnette,** 319 U.S. 624, 63 Supreme Court, 1178 (1943)

> "The Church speaks through the cross, the crucifix the altar and shrine and clerical raiment. Symbols of state often convey political ideas just as religious symbols come to convey theological ones."

In addition, please note that the District Court follows the test laid down in **Abington School District v. Schempp** (supra) which looks to the purpose and **primary effect.** Nevertheless, the District Court Opinion is totally void of reference concerning the effect of the Latin Cross shown in App.___. We believe that it would be impossible for any court to deny that the **primary** effect of the Latin Cross on the Dade County Courthouse in December and January each year is religious, and yet this is exactly what the District Court Opinion finds by virtue of that Court's refusal to discuss the primary effect. Petitioner asserts that the affirmance by the District Court holding the said Latin Cross not to be a religious symbol is without any foundation in law or in fact.

II. THE ERECTION AND DISPLAY OF A RELIGIOUS SYMBOL (LATIN CROSS) ON A PUBLIC BUILDING (DADE COUNTY COURTHOUSE) BY GOVERNMENTAL ORDER (DADE COUNTY BOARD OF COMMISSIONERS) WITH OR WITHOUT THE UTILIZATION OF TAX FUNDS VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS PROHIBITING GOVERNMENTAL ESTABLISHMENT OF RELIGION.

The Establishment Clause of the First Amendment prohibits aid to all religions, regardless of the non-preferential and voluntary aspects which may be attached. **Everson vs. Board of Education,** 330 U.S. 1 (1947); **Engel v. Vitale** (Supra). It is stated in **Everson**

> "The 'establishment of religion' clause of the First Amendment means at least this: neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from a church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or instructions, whatever they be called, whatever form they may adopt to teach or practice religion. Neither the State nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or

> groups and vice versa. In the words of Jefferson, the clause against the establishment of religion by law was intended to erect 'a wall of separation between church and state'."

In the case at bar, Dade County has openly flaunted the **Everson** decision each year by appropriating tax dollars for the erection of the Latin Cross on the Dade County Courthouse.

It should be mentioned that on November 15th, 1966 the date of the trial of this cause, the County allegedly received a check from private sources for the erection of the Cross. (Page 57 of typed tr.) This was sham as the record clearly will reveal. As if the sudden appearance of a check on the very day of the trial were not sham enough, the alleged private sources admitted that they were nothing more than an instrument of the County Government:

> "At the request of Council, I myself made it available to the population of Dade County as a Collection Agency for private donated funds to erect the Cross on the Courthouse in 1966." (Typed TR Page 42)

> "We acted as a collection agency at the request of the County Commissioner's through the County Manager." (Typed TR Page 49)

The sham is completely exposed on pages 83 and 85 of the typed TR. Ray Goode, Budget Director, testified

> "Q. Mr. Goode, is the appropriation for the

erection of the religious symbols, including the cross, still in the budget?
A. Yes, sir.

Q. To your knowledge, then, the appropriation is still in there; the Commissioners have taken no action to remove it?
A. That is right.

Q. To your knowledge no further action by the Commission has been taken to remove it, to do anything with it?
A. That is correct."

The final admission of the sham came in 1967 when the 1967-1968 Budget revealed an appropriation in the exact same sum as that of the 1966-1967 Budget (please see App.__ hereto). Please note that the District Court of Appeal Opinion completely disregards the foregoing and finds that public funds will not be utilized.

Even if private funds were used to erect the Cross, the First and Fourteenth Amendments would still be abridged by virtue of a basic, fundamental religious symbol being erected on a public building by governmental order. The association and participation by government in aid of religion thus becomes obvious. **McCollum vs. Board of Education,** 333 U.S. 203 (1948); **Torcaso vs. Watkins,** 367 U.S. 488; **Abington School District vs. Schempp,** (Supra); and **Engel vs. Vitale** (Supra).

III. DENIAL OF EQUAL PROTECTION OF THE LAWS.

It is obvious that the governmental order and erection of the Latin Cross as opposed to other religious symbols or none at all is a preference for Christianity in violation of the Equal Protection clause of the Fourteenth Amendment. Government is required to remain neutral between religions as well as between religion and non-religion. **Everson vs. Board of Education** (Supra), **McCollum vs. Board of Education** (Supra) and **Engel vs. Vitale** (Supra). The governmental selection of the Christian religious symbol to erect is arbitrary and unreasonable and a denial of the equal protection of the laws. **Cotting vs. Godard,** 183 U.S. 79, 46 L.Ed. 92, 22 S.Ct. 30.

CONCLUSION

The foregoing substantial federal question involving the erection of a religious symbol on a public building by governmental order has never been decided by the United States Supreme Court. A decision on this question is sorely needed. For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Alfred I. Hopkins
Attorney for Petitioner
1701 Meridian Avenue,
Miami Beach

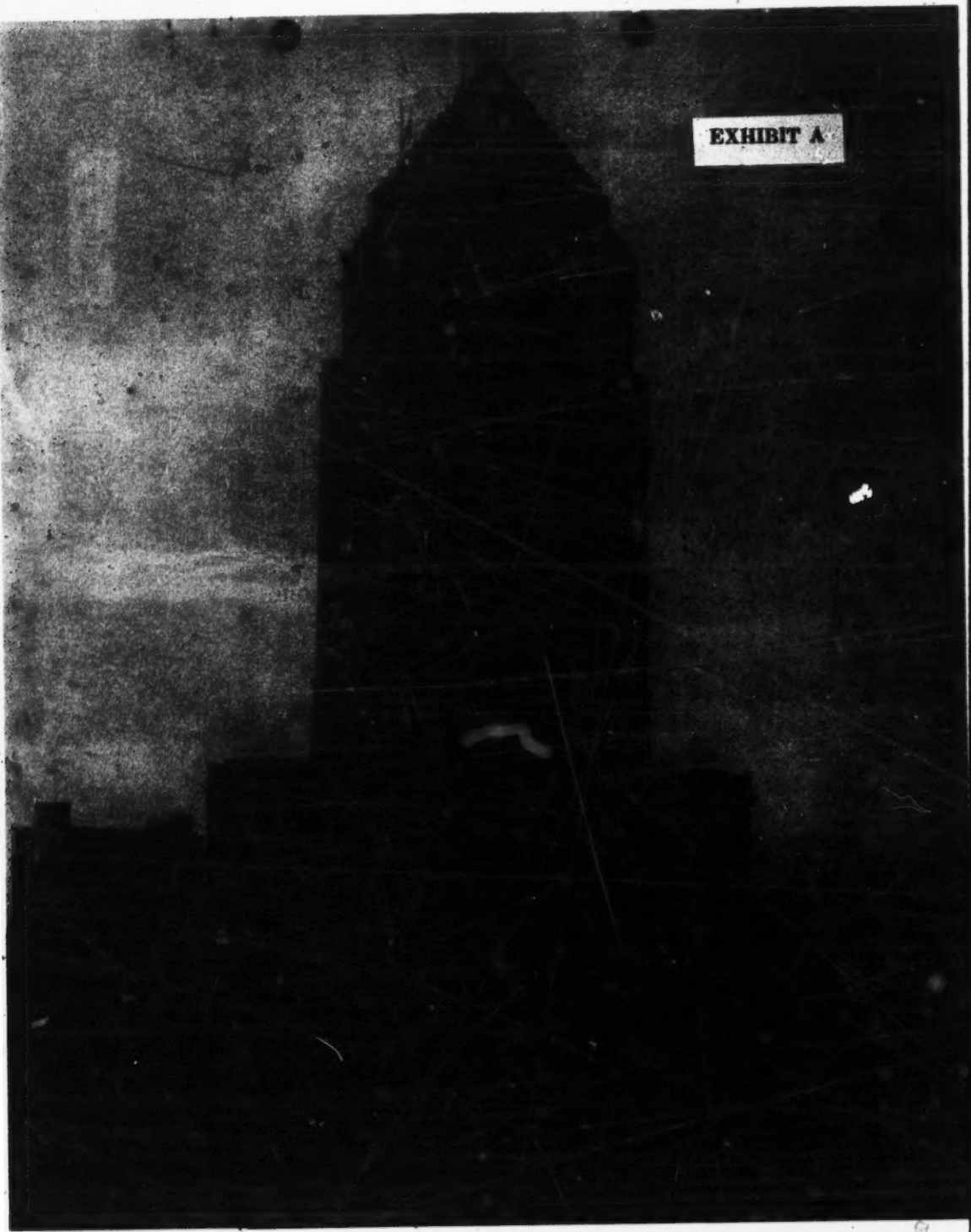
HOWARD J. HOLLANDER
BERNARD C. PESTCOE
Of Counsel
708 City Natl. Bank Bldg.
Miami, Fla.

CERTIFICATE OF SERVICE

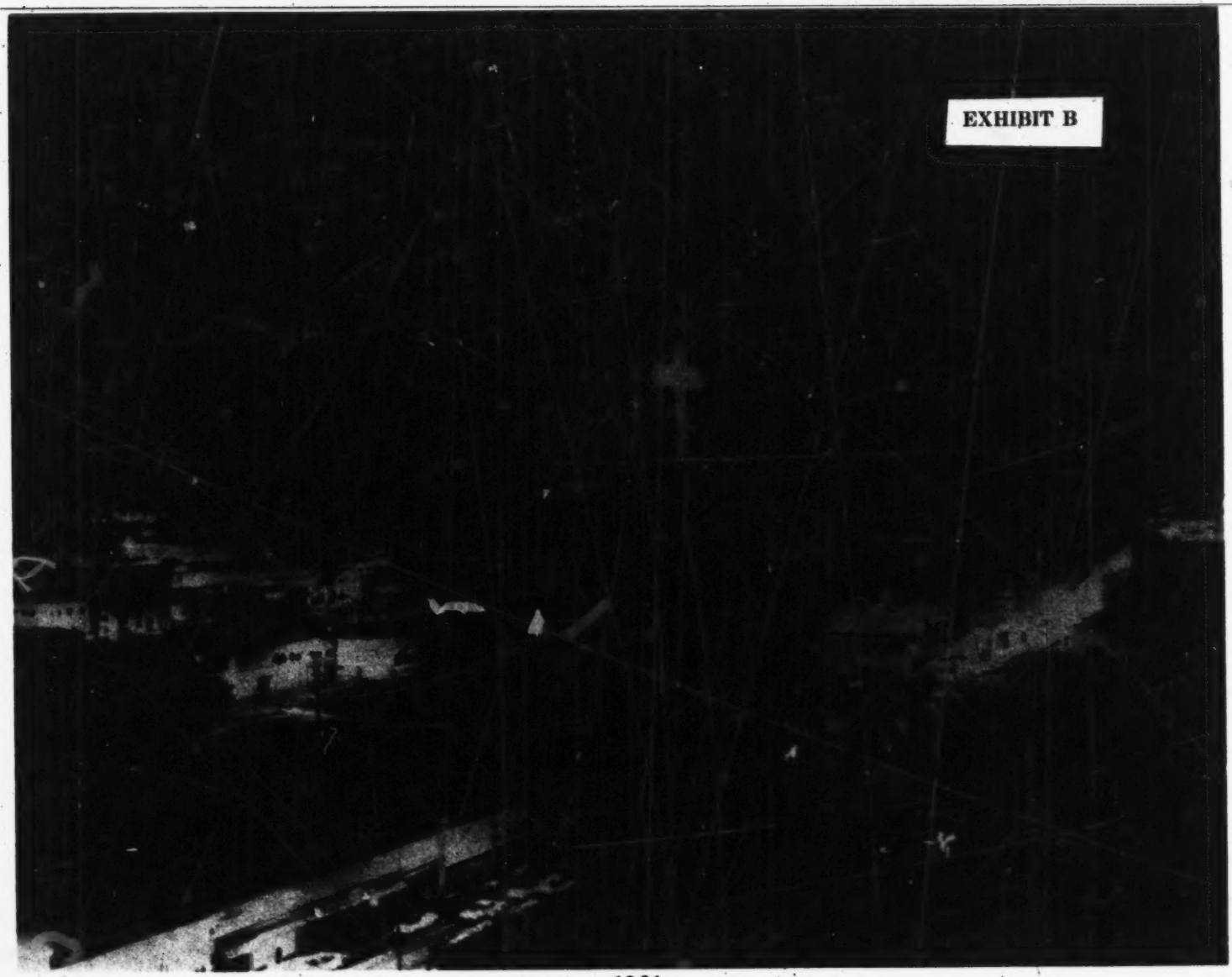
I HEREBY CERTIFY that a copy of the foregoing Petition for Writ of Certiorari has, pursuant to Rule 33 of the Rules of the Supreme Court of the United States, been served by mail upon the County Attorney, County of Dade, Florida, by mail this ____ day of March, 1968.

ALFRED I. HOPKINS
Attorney for Petitioner

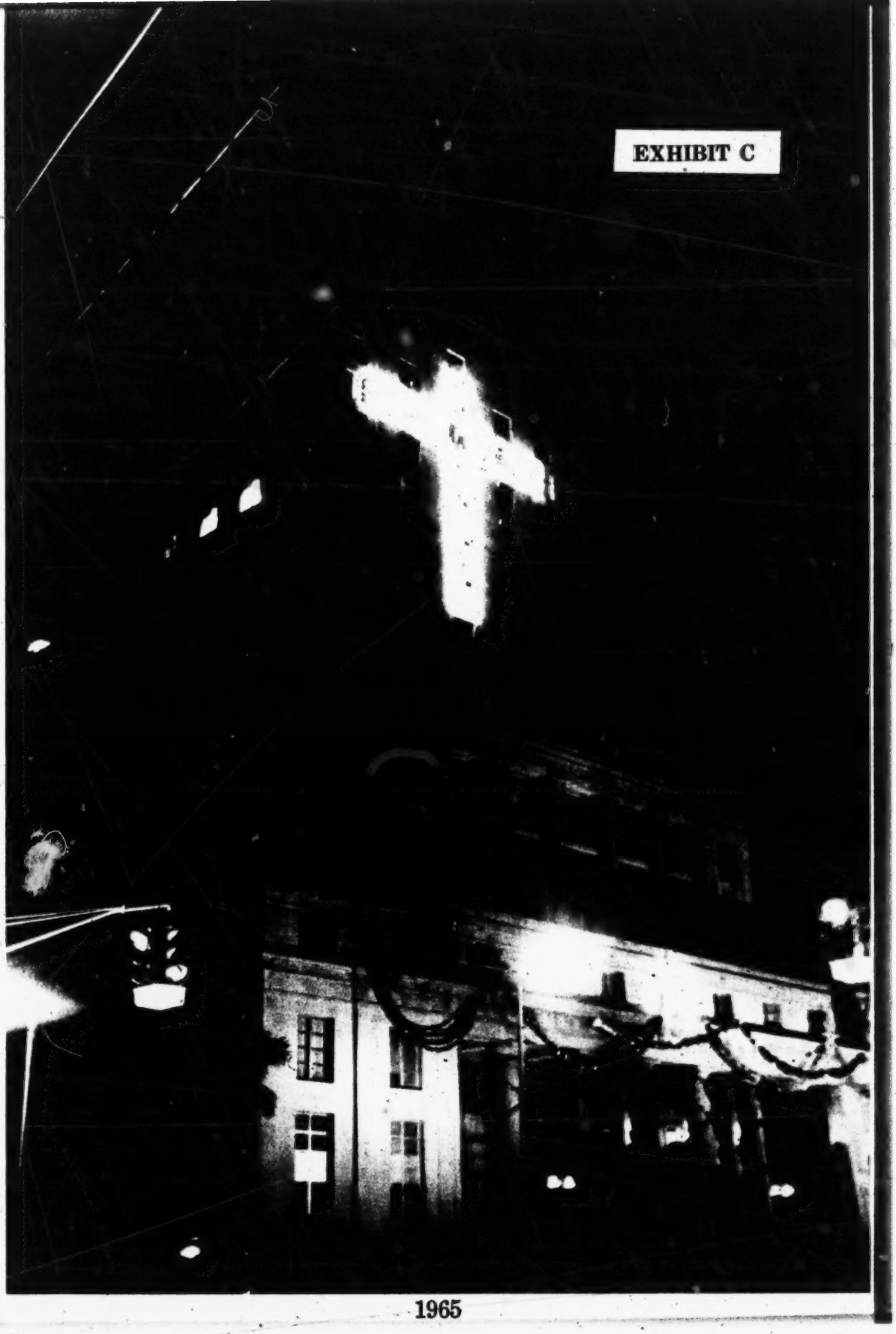
HOWARD J. HOLLANDER
BERNARD C. PESTCOE
Of Counsel



1958



1961



1965

Lawsuit Filed To Keep Cross Off Courthouse

By C. G. BERNING
and JO WERNE
Herald Staff Writers

A suit to keep the lighted cross off the Courthouse this Christmas season was filed in Dade Circuit Court Tuesday by a non-Christian who says the Christian religious symbol interferes with his own religious opinion and violates state and federal laws.

The suit, filed by Nishan Paul, 5901 SW 97th St., asks that the County Commission be ordered to take the cross money out of this year's budget and be enjoined from permitting the cross to be erected.

The controversy, the suit says, involves the principle of separation of church and state. It describes Paul as a "non-Christian" and says he unsuccessfully protested before the County Commission last July 26.

The case was assigned to Judge Ralph O. Cullen.

Meanwhile, Luther C. Pierce, executive secretary of the Greater Miami Council of Churches reported that donations for the Christmas Cross on the Courthouse now total $162.

"But we've got a long way to go to reach the total cost of $840," he said.

As of Tuesday, 16 individuals had contributed gifts from $1 to $100, he said.

"There seems to be some confusion in the mind of the public as to why we are having this drive," Pierce said. "Money has been budgeted by the County Commission for the cross, but the commission has appealed to the public for funds to make it truly something the public wants."

"The county will put up the cross whether or not private donations come in," Pierce said, "but we hope the citizens will be generous."

What funds are donated will be turned over to the county to defray the cost of lighting up the courthouse during the Christmas season.

Private handling of what had been a routine county function became necessary after a Unitarian minister, Dr. John Papandrew, threatened legal action against Dade because it was using government funds for a religious project.

Donations should be sent to Courthouse Cross Project, Greater Miami Council of Churches, 309 Huntington Building, Miami, Fla., 33131.

4A THE MIAMI NEWS, Wednesday, Dec. 29, 1965

Dade Stand On Cross Praised

Metro Mayor Chuck Hall has received letters from all over the United States commending the Metro Commission for its stand in refusing to move the cross from the side of the courthouse.

Last week, the Rev. John Papandrew of First Unitarian Church, state chairman for the American Civil Liberties Union, protested the cross, asked it be turned off and no longer put up on the grounds it was unconstitutional since tax funds were being used for religious purposes.

There was no second on Commissioner Earl Starnes' motion to remove the cross and it remained.

Mrs. Marion Burns of El Segundo, Calif., wrote Hall:

"May there be stars in your crown for defending the Christian way. I believe as you that these matters should be left to the choice of the people not because some one kook screams."

Carl Whisler, of Oklahoma City, wrote, "We have eight children of our own and would be proud to have them live in your jurisdiction. God bless you and your staff and keep you there for many years to come."

Mrs. Ollie Coleman of Haughton, La., wrote, "I saw the lights of the cross and thought they were beautiful. May God help those who don't believe there is a God."

Cross Controversy Continues to Rage

The next move in the "cross on the Dade County courthouse" controversy is up to **Nishan Paul** whose attorneys appeared before the Metro Commission last week to protest the erection of the cross. The commission refused to take any action at that time.

The attorneys, Howard J. Hollander and Bernard Pestcoe, indicated that they would take action. Pestcoe said, "We will follow the desires of our client in this matter."

Paul, an Eastern Airlines mechanic who lives at 5901 S.W. 97 St. said, "When you allow church and state to go together like this you end with a situation like Franco's Spain, where you can't tell the line between them."

The latest advocator of church-state separation said he thought it was "very unconstitutional to erect religious symbols on state or county property." Paul said that "the proper place for religious symbols are on religious buildings and churches."

He feels that the commissioners have allowed the cross to be erected on the courthouse because of "political expediency." "They probably know a lot more about the Constitution than I do" Paul said, "but they are too interested in getting votes."

The controversy over the cross has been raging for several years. Recently the issue has been pursued by the Rev. John Papandrew of the First Unitarian Church. Paul said that he had no personal connection with Rev. Papandrew but "I have heard him speak several times and I think that he is a very fine man."

According to Paul, while the tax money is being spent to put up the cross other matters which should be covered by tax revenue are being neglected. He said his neighborhood had been bothered by mosquitos recently but "money couldn't be used to spray the area by airplane. However, they can find $2,500 to erect the cross on the courthouse."

While the controversy rages, contributions are trickling in to the Greater Miami Council of Churches to pay the cost of putting up the cross. **Luther Pierce**, executive secretary for the Council of Churches said "we have raised $138 so far. Thirteen contributors have donated sums ranging from $1 to $100.

...egotiations
...mpleted, the parties
...ll go to trial."

Mrs. Kennedy seeks a permanent injunction against the publication of the book

Miami News

Oregon City Must Remove Park Cross

EUGENE, Ore. — (AP) — A 50-foot concrete cross in a city park must be removed, a judge has ruled.

The decision yesterday by William Fort, Lane County circuit judge, ended more than two years of litigation.

Opponents of the cross on Skinner's Butte, a hill overlooking the city, said it violated constitutional guarantees of separation of church and state.

Fort did not rule on the constitutional question but said the cross violates a city charter by being a religious symbol on public property.

Dr. Judah Bierman, chairman of the American Civil Liberties Union of Oregon, said the decision was a victory for freedom of religion.

Fort said the cross must be removed by the city and Eugene Sand and Gravel Co. within 10 days.

It was Sand and Gravel President John Alltucker who erected the neon-lighted cross Nov. 28, 1964, setting off the bitter controversy.

Howard Hollander, Esq. - City Nat'l Bank Bldg. Miami

A servi...
ty residen...
Orsdel Gre...
Mrs. ...C
Minn., lived...
She di...
chell, who ...sso-
She is sual...12

MRS. GERTR... 775 NW 13th Ave...ge
MRS. DOROT... 3050 Collins Ave.,
JOSEPH CU... 11th Ct. Servi...rd, City of Miami...by McHale-Mugic-
RAYMOND ...the 13, of 8430 NW ...at 9:30 a.m. ...illy ...edral. Arrang... for Chapel.
MRS. BECK ...ev- Pennsylvania ...vices in New ...the by Riverside A...m-
DAVID H. ... NW 5th St. Rosary ...Lanier-Jesberger C... at 10:30 a.m. ...Catholic Church.
LUCAS GRIEB, ...ami Beach. Servi... local arrangemen... Street Chapel.
MRS. LULA B. ... 8th Ct., Hialeah.
MRS. ROSE ... 12271 SW 188th ... tomorrow, Allis...
WILLIAM H. ... SW 301st St., ... 10:30 a.m. ... Church. Arr... Chapel.
MRS. MARY ... 19301 SW 87th ... ter. Mass... ... Hale Bird Roa...
MRS. ANNA ... City.
LEWIS W. ... ami. Service ... Orsdel Bird
JOHN LE... vice at 4 ... tist Church ... Memorial C...
JAMES ... SW 51st C... Van Orsd... quiem ma... Dominic...
EMIL... 35th St ... Mass A... quiem ... Corpus ...
JOSE... 829 Lo... mass ... the L...

5 INDICTED IN HIA... SL...

Wool...

EXHIBIT D

EXHIBIT D

Remarks on Religion

Church Council Has Cross to Bear

By ADON TAFT
Herald Religion Editor

The cross has been controversial down through history. For many reasons.

It has been controversial in Miami as elsewhere, particularly when it has appeared in lights on the Dade County courthouse at Christmas time.

TAFT

Outbursts against such a display of the cross usually have come from some militant atheist or a sensitive Jewish spokesman.

But this week the controversy erupted within the leadership of the Greater Miami Council of Churches.

The executive committee of the council's Department of Christian Social Concerns submitted a report on the subject that sent sparks flying from at least one of the members of the Council's board of directors — Ted Slack, a Lutheran layman.

The report, prepared by the Rev. H. Stewart Austin, minister of the Wesley Methodist Church and chairman of department of social concerns, urged the council to "seek to persuade the county commission and manager that the purposes of religion can best be served by not erecting the Christmas cross in the future, and that it would be wise to proceed without announcement."

The action was recommended to avoid "heated controversy in our community at a time when the witness of peace should be most effective."

The board of directors did not act on the recommendation, which also has a group of former lay members of the board up in arms on the issue on which they felt they had won a victory in the past.

But there was considerable expression of agreement by board members over at least some of the report's suggestions. One of those was that "the general feeling among Protestant Christians is that the cross is a poor Christmas symbol, but there would be considerable opposition to its removal (from the courthouse) because of an ill-defined feeling of insult to the church."

Several of the directors expressed the feeling that the star of Bethlehem is a more fitting symbol for Christmas than the cross and agreed with the report that the council should "seek the support of as many private business firms as possible in a goal of erecting more suitable Christian Christmas symbols on as many of our major downtown business structures as is possible."

The basic issue is the separation of church and state, according to the Rev. Mr. Austin's committee.

However, nothing was said about the annual Easter program produced by the local ministerial association, the YMCA, and the Chamber of Commerce on the lawn of the Coral Gables City Hall, which also has been questioned by the same people who question the cross on the courthouse.

And nobody raised a question as to where the issue will wind up when such events as these are considered: the Easter Sunrise Pageant in the city-owned Orange Bowl; Florida regional conventions such as that of the Episcopal Diocese in city-owned Bayfront Park Auditorium; national religious gatherings such as the Southern Baptist Convention in city-owned Miami Beach Convention Hall; traditional Catholic rites at the Torch of Friendship in Bayfront Park or city-owned Miami Stadium; the use of city-owned Miami Beach Auditorium for observance of the Jewish High Holy Days. And the list could go on.

Gene Rankin, a Presbyterian layman who is president of the council, found himself most in agreement with the report's observation that "it is a pity that we have to concern ourselves with this particular issue, for it can be argued quite successfully that the whole thing is insignificant in the total mission of the church."

Rankin said, "I believe more in saving souls than in saving symbols." So he was enthusiastic about the report of the council's evangelism department, headed by the Rev. J. Ray Dobbins, superintendent of missions for the Miami Baptist Association.

The board accepted his plan for two weeks of simultaneous evangelism efforts by all the Christian churches of the area — Catholic as well as Protestant (whether or not they are affiliated with the Council — and set the dates for Feb. 11-25, 1968.

The plan calls for each denomination to carry on its own particular brand of evangelism in its own way. But all the churches would band together for a joint advertising effort, would unite in a preceding three-week radio program to direct home prayer and study groups; would join in a program of "prayer and dialogue" situations in industries, institutions, and homes; and would have their clergy and lay leaders participate in joint planning and prayer meetings.

With good participation, the pre-Lenten program could really have an impact on the city, Rankin feels, and prepare new Christians for the deepening experience of the Lenten services in the churches of their choice. The net result could be a completely changed atmosphere for Dade County, he's sure.

* * *

SWITCHING the subject from the local Council of Churches to the National Council of Churches doesn't lessen the atmosphere of controversy. If anything, it heightens it, despite the fact that last weekend Bishop Reuben H. Mueller, president of the national agency, paid a visit here to try to smooth ruffled feathers.

He addressed a dinner for clergy and key layman to explain the organ-

The Miami Herald
RELIGION
NEWS FEATURES

A number of laymen seemed to be agreed on the whole thing. "Bishop Mueller impressed me as being deeply sincere and a dedicated, believing Christian," said one. "But he's not a salesman, unfortunately."

"It was obvious that three years in that post had gotten under his skin," he continued. "It was regrettable, but I didn't feel the compassion and love he spoke of, but felt his resentment."

Another layman reported that "I went there expecting to be sold. I expected an admission that perhaps the council has made some mistakes and a plea for understanding and help in making it all it should be."

"Instead," he continued, "we were told to like it or lump it and that there's nothing we can do about it. His (Bishop Mueller's) attitude showed no Christian love at all. He could never be a salesman for me."

These men were not of the "radical right," which also was represented in the audience. They were distinguished layment who have been active in local denominational and council affairs.

And the thing which still upsets these men as it did before Bishop Mueller's visit is the stand the National Council and its bodies take on economic and political issues where, in the view of these laymen, there is no clear-cut moral issue.

They really believe in many of the other activities of the council, but wonder at the emphasis on controversial areas.

Conference Set In Canada

RICHMOND, Va. — (UPI) — The 1966 Christian Action Conference will be held in Montreat, N.C., Aug. 18-21, says the Division of Christian Action of the Presbyterian Church in the United States, its sponsor.

Theme of the conference, which is held annually [illegible]

Christian Science
CHURCHES
LESSON-SERMON SUBJECT
SUNDAY, MARCH 20
"MATTER"
• MIAMI - FIRST CHURCH

EXHIBIT E

STATE OF FLORIDA)
)SS:
COUNTY OF DADE)

I, E. B. LEATHERMAN, Clerk of the Circuit Court in and for Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Pages 25 and 26 and 27 from the minutes of the meeting of the Board of County Commissioners held on June 20, 1966, as appears of record.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 23rd day of February A.D. 19 67.

E. B. LEATHERMAN, Ex-Officio Clerk
BOARD OF COUNTY COMMISSIONERS
Dade County, Florida.

By _____
DEPUTY CLERK

SEAL

BOARD OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

Mayor Hall noted that the Board had previously considered the 123 acre Palmetto Club Golf Course property, and deferred action to tomorrow's meeting.

It was moved by Commissioner Earl M. Starnes that the Board approve the report and recommendation of the County Manager in connection with the 84-acre tract owned by J. J. Lamb. This motion was seconded by Commissioner Lewis B. Whitworth, Jr., and upon being put to a vote, unanimously carried. (Copy on file in Clerk's office).

5 (b) It was moved by Commissioner Earl M. Starnes that the Board approve the report on implementation of Hurricane Betsy Damage Report presented by County Manager. (Copy on file in the Clerk's Office). This motion was seconded by Commissioner Arthur H. Patten, Jr., and upon being put to a vote, unanimously carried.

Commissioner Patten stated it was his desire to discuss another item of pending business.

It was moved by Commissioner Arthur H. Patten, Jr. that the County Manager be instructed to replace in the 1966-67 Budget an appropriate amount of funds for placing Christmas decorations on the Courthouse. This motion was seconded by Commissioner Lewis B. Whitworth, Jr.

Vice-Mayor Gordon declared Commissioner Patten out of order, and requested that the subject be discussed during County Commission reports.

6 (a) It was moved by Commissioner Thomas D. O'Malley that City of Miami resolution requesting revision of Pollution Control Ordinance to allow open fires without permit for Fire Department recruit training, be referred to the Pollution Control Board for report and recommendation. This motion was seconded by Commissioner Lewis B. Whitworth, Jr., and upon being put to a vote, unanimously carried.

6 (b) It was moved by Commissioner Thomas D. O'Malley that City of Miami resolution opposing location of proposed East-West Expressway exit ramp at 37th Avenue, be accepted and filed for record. This motion was seconded by Commissioner Earl M. Starnes, and upon being put to a vote, unanimously carried.

6 (c) It was moved by Commissioner Thomas D. O'Malley that City of Miami resolution urging approval of Airport Connector route West of LeJeune Road, be accepted and filed for record. This motion was seconded by Commissioner Earl M. Starnes, and upon being put to a vote, unanimously carried.

6 (d) It was moved by Commissioner Thomas D. O'Malley that City of Miami resolution requesting abandonment of 82nd Street project between Biscayne Boulevard and NE 10th Avenue, be accepted and filed for record. This motion was seconded by Commissioner Earl M. Starnes, and upon being put to a vote, unanimously carried.

6 (e) It was moved by Commissioner Thomas D. O'Malley that City of Miami Beach resolution requesting cooperation in preparation of application for federal assistance in planning South Shore General Neighborhood Renewal Plan, be referred to the Urban Renewal Agency for report and recommendation. This motion was seconded by Commissioner Harold A. Greene, and upon being put to a vote, unanimously carried.

6 (f) It was moved by Commissioner Thomas D. O'Malley that Women's Club of Homestead resolution requesting swimming pool, be accepted and filed for record. This motion was seconded by Commissioner Earl M. Starnes, and upon being put to a vote, unanimously carried.

6 (g) The Clerk presented to the Board the names of two Confederate Pensioners, as follows:

Mrs. Lula Cook
Mrs. Minnie A. R. Taylor

He advised the Board that the Department of Welfare had checked and found that these persons were still residents of Dade County.

EXHIBIT E

It was moved by Commissioner Joseph A. Boyd, Jr., upon the recommendation of the County Manager, that these pensioners be approved as required by law and that the Clerk be instructed to notify the proper Pension Board of the State of Florida. This motion was seconded by Commissioner R. Hardy Matheson, and upon being put to a vote, unanimously carried.

6 (h) It was moved by Commissioner Lewis B. Whitworth, Jr. that the Clerk be authorized to issue duplicates of the following County warrants:

Date	Number	Fund	Payee	Amount
12/31/65	271749	Payroll	K.A. Oppenheimer	$165.79
1/6/66	276	Urban Renewal Agency Project Expenditures Account Project #Fla. R-10	Mildred Woodside	45.00

This motion was seconded by Commissioner Harold A. Greene, and upon being put to a vote, unanimously carried.

6 (i) It was moved by Commissioner Harold A. Greene that all Special Deputy Sheriff's Bonds submitted be approved and that such approval be indicated by the certificate of the Clerk of the Board being affixed to said bonds and that said bonds be recorded in the Deputy Sheriff's Bond Register and that said Deputy Sheriff's Bond Register be designated as a supplemental minute book. This motion was seconded by Commissioner Joseph A. Boyd, Jr., and upon being put to a vote, unanimously carried.

6 (j) Previously considered. Action deferred to tomorrow's meeting.

6 (k) It was moved by Commissioner Harold A. Greene that the applications of the following persons for admission to the State T. B. Sanatoriums be approved:

Almena Pashby
Maude Toomer
Willie Arthur Youngblood
Eleanor Fay Dolson
Willie Morton
Thomas Eugene Turk
Wing Lee
Carlon Hicks
Ruth A. Ault
Isabel Garrido Pineda
Louis Phillip Elbrand

This motion was seconded by Commissioner Thomas D. O'Malley, and upon being put to a vote, unanimously carried.

County Attorney Britton explained the status and situation in connection with application for Blasting Permit by Harry Rowe.

After careful consideration by the Board, it was moved by Commissioner Earl M. Starnes that the Board uphold the action of the Sheriff's Department in denying Blasting Permit for Harry Rowe. This motion was seconded by Commissioner Arthur H. Patten, Jr., and upon being put to a vote, unanimously carried.

County Attorney Britton stated that shortly after the County experienced difficulty with regard to the placing of a Cross on the Courthouse, several citizens volunteered to bear the cost involved. He said he had, therefore, requested the County Manager to delete from the 1966-67 Budget that part of expenses attributed to the installation of the cross; however, through an error the entire amount for placing the decorations on the Courthouse was deleted. He stated the entire item was for $2,400.00, $840.00 of which was designated for the installation of the cross. He said the Board, if it insists on placing the $840.00 in the budget for this purpose, will provoke a law suit which could be resolved against the County, but if contributions are accepted for this purpose, the Board's action for installing the cross on the courthouse will be upheld.

It was moved by Commissioner Arthur H. Patten, Jr. that the County Manager appropriate funds in the 1966-67 Budget for placing Christmas decorations on the Courthouse. This motion was seconded by Commissioner Lewis B. Whitworth, Jr.

County Attorney Britton stated it was his opinion if the amount is placed into the budget that the County will be faced with a law suit within 60 days. He urged the Board to consider accepting the contribution of private funds which are available.

Commissioner Patten stated he was not aware that funds were available from private sources to accomplish this. He said the Board should have been informed, because if this fact was true, he would have liked to have known about it before he made the motion.

Commissioner Boyd stated that the County received world-wide recognition of its action last winter, and it should not recede from its position at this time. He said he was willing to have the matter litigated. He stated there has been a trend in America toward the elimination of many things which have been accepted as standard in the American way of life.

It was moved by Commissioner R. Hardy Matheson that a star be placed on the courthouse in lieu of the cross. This motion died for lack of a second.

The Board then voted upon Commissioner Patten's motion that the County Manager appropriate funds in the 1966-67 Budget for placing Christmas decorations on the Courthouse, and upon being put to a vote, passed by a vote of 6-0, Commissioners Harold A. Greene, Thomas D. O'Malley and Earl M. Starnes were absent.

County Attorney Britton stated that the Clerk and Tax Assessor have raised a question with regard to the scheduling of Tax Equalization hearing days. He said the Tax Assessor has advised, to the best of his knowledge, that 19 days of equalization is anticipated this year, such days to be scheduled between July 5, 1966 and August 20, 1966.

Mr. Rue Gewert, Dade County Tax Assessor, appeared before the Board, and stated that approximately 100 cases have thus far been filed this year; however, the deadline for filing applications will be set by the Board during the course of the hearings.

After further discussion, the Board agreed to hold Tax Equalization meetings from July 5 to 8, 1966, at 9:00 A.M., at which time it will be in a position to schedule future meetings.

Commissioner Boyd stated a letter of complaint has been distributed regarding the jailing and mistreatment of John Cassell, a minor, following his appeal in court of a traffic violation. He said it was shameful for the responsible person to place this 18 year old in jail with prisoners for 1-1/2 hours.

It was moved by Commissioner Joseph A. Boyd, Jr. that the County Manager be requested to investigate facts involved with regard to complaint of John Cassell, a minor, for jailing and mistreatment following his appeal in court of a traffic violation. This motion was seconded by Commissioner Alexander S. Gordon, and upon being put to a vote, passed by a vote of 8-0, Commissioner Thomas D. O'Malley was absent.

Commissioner Gordon requested the County Attorney to determine if the County could legally require motorcycle rental companies to rent motorcycles only to 16-year olds and over who possess unrestricted licenses; and if so, to prepare appropriate ordinance for consideration by the Board.

Commissioner Gordon stated that the Board, approximately two months ago, adopted in principle the recommendation that the Airport Connector Route be placed West of LeJeune Road and requested the State Road Department to determine if this location was feasible. He questioned if the State Road Department has submitted its recommendation.

Mr. John J. McCue, Director, Dade County Public Works Department, advised that the State Road Department will present its answer in approximately one week as to whether or not it would place the Airport Connector Route from the East-West Expressway west of LeJeune Road.

Commissioner Gordon stated he has read in the newspaper about the conditions existing at Youth Hall with particular respect to occurrences which stem from inadequate or improper supervision.

County Manager Homer stated that many conditions have been corrected since January, at which time Mr. Moran was placed in charge, and he is moving ahead on many other changes which will help to alleviate the situation. He said he has provided in the 1966-67 Budget an appropriate amount for the employment of part-time help.

EXHIBIT F

STATE OF FLORIDA)
)SS:
COUNTY OF DADE)

I, E. B. LEATHERMAN, Clerk of the Circuit Court in and for Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the tentative 1967-1968 Annual Budget (page 365) ~~from the minutes of the meeting of the~~ Board of County Commissioners ~~of~~ Metropolitan Dade County, Florida, as appears of record.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 30th day of June A.D. 19 67.

E. B. LEATHERMAN, Ex-Officio Clerk
BOARD OF COUNTY COMMISSIONERS
Dade County, Florida.

By _____
DEPUTY CLERK

SEAL

BOARD OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

This reflects an increase of $18,304 over the current budget. The last item in the above list was specifically included at the county's request since the current film on Metropolitan Government was produced in 1959 and is now out-dated.

Code 4624 - Courthouse Decorations: The $2,000 provided in this code is the same as for this year and represents the cost involved for the annual Courthouse Christmas decorations.

Code 4626 - Community School Program: This program is patterned after the famous "Mott Plan" which originated and proved to be highly successful in Michigan. This $30,000 appropriation provides funds for the operation of six such programs administered by the Board of Public Instruction at Madie Ives Elementary, Norland Junior High, M adison Junior High, Moton Elementary, South Miami Junior High, and the J.F. Kennedy Junior High School. The county's appropriation pays the salary ($5,000) of each of six program supervisors.

SPECIAL SERVICES (140.02)

Code 2010 - Professional Services: This $30,000 appropriation will be used to pay our legislative liaison in Washington, D. C. and other special planning, engineering, and financial consultants as may be needed.

Code 2011 - City of Miami Utility Rate Appeal: The $15,000 provided in this account is for Dade County's share of the cost of the utility rate appeal in cooperation with the City of Miami.

Code 2012 - County Armory: This $7,000 appropriation is to pay for the utilities used by the National Guard Armory located at 2728 N. W. 7th Avenue. This cost is part of a standard agreement between the State and local jurisdictions for defraying certain operating expenses of the armory.

Code 2013 - Ambulance Contract: This appropriation is for payment to Randle-Eastern Ambulance Service, Inc., for services rendered in accordance with the county's existing contract. The service has expanded this year, because several funeral homes and ambulance companies have dropped out of the business since their employees are now covered by the Minimum Wage Law and operating expenses have become excessive. The amount provided is based on the projection of the current year's services, with an additional 15% increase based on growth experience in past fiscal years.

Code 2014 - Codification of Metro Ordinances: This $15,000 appropriation is to provide funds for the numerous supplements and changes to the Metro Code as a result of adoption or amendment of county ordinances. This appropriation also provides for the binders and covers of the Metro Code book.

Code 2015 - Audit: This appropriation of $35,000 is to provide funds for the regular and special audits of external auditors.

Code 2017 - Advertising: This $30,000 appropriation is to cover the expense of county advertising required by law such as advertising the proposed budget, ordinances, request for sealed bids, special elections and tax sales, etc. This appropriation is administered by the Clerk of the Board who places all legal notices in the local news media.

EXHIBIT F NONDEPARTMENTAL EXPENDITURES

Code 2210 - Communications: The $220,000 appropriation is for county use of City of Miami telephone switchboard and telegraph service. The costs involved are periodically audited, and control is exercised by a continual review of all existing service and requested new telephone service in all county departments. Current projections indicate that the $195,000 budgeted this year is inadequate, and the 1967-68 appropriation has been adjusted accordingly. Also, funds have been allowed in the proposed budget for the numerous moves anticipated in the Courthouse next year, requiring many phone changes.

Code 2220 - Utilities: This budget of $284,131 is to pay for electricity, water, and gas for the Courthouse, Justice Building, Biscayne Arena and for electric power for water control navigation lights, boat lifts, pump stations and drawbridges.

Code 2221 - Streetlighting: This appropriation will cover the cost of leasing streetlighting facilities from the Florida Power and Light Company for 1967-68. Included is the county's share of streetlighting in special taxing districts, and all arterial and causeway street lights which are leased. Various arterial streetlighting projects which have been completed in the current fiscal year (shown in the 1966-67 Capital Improvements Program) are included in the projected cost.

Code 2222 - Street Lights - County-owned: This appropriation is for county-owned street lights and was previously budgeted in the Public Works, Traffic Signal Division budget. The amount has been transferred to non-departmental expenses since all other streetlighting costs are considered non-department costs.

Code 2223 - Street Lights - City Transfer: This appropriation is provided for the assumption by the county, of the costs of the City of Miami's arterial streetlighting program, effective January 1, 1968, in accordance with County Commission action of May 5, 1967.

Code 8610 - Replacement of Pool Cars: This amount is provided for the replacement of four pool cars from the Courthouse and Justice Building motor pools. These cars are used by several departments at each location.

Code 2520 - Employees' Suggestion Awards: This $800 is for the semi-annual grand awards made to county employees for suggestions resulting in monetary savings to the county.

Code 2710 - Rent: This appropriation is to provide payments for the county-leased facilities including fire stations, police and fire substations, the voting machine warehouse, Public Works Maintenance Buildings, a Building and Zoning Substation, Welfare Offices and Surplus Food Warehouses, and Traffic and Transportation Buildings.

Code 140.03.1010 - Reserve for Salary Adjustment: This appropriation is to provide for the general pay increase for all county employees, except those elected and appointed officials and professionals who do not have an established pay range, and to provide for the additional pay plan adjustments which have been recommended. This reserve is for General and Fine & Forfeiture Fund employees and will be allocated to each department before final adoption of the budget, if approved by the County Commission.

EXHIBIT G

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, E. B. LEATHERMAN, Clerk of the Circuit Court in and for Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Page 252 of the Official Budget and Operating Budget of Dade County, Florida, for the fiscal year commencing October 1, 1967, and ending September 30, 1968, adopted by the said Board of County Commissioners at its meeting held on September 19, 1967.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 17th day of October, A. D. 1967.

E. B. LEATHERMAN, Ex-Officio Clerk
Board of County Commissioners
Dade County, Florida

By Eva B. Hartley
Deputy Clerk

GENERAL FUND

EXHIBIT G

EXPENDITURES

Code No.	Expenditure Code Classification		
140.	NON-DEPARTMENTAL EXPENDITURES		
.01	Community Promotion		
.4611	Community TV Foundation of South Florida - Channel 2	2,500	
.4612	Greater Miami Traffic Association	11,250	
.4613	Dade County Youth Fair	12,000	
.4619	PTA Rockpit Program	1,200	
.4623	General Publicity	164,455	
.4624	Courthouse Decorations	2,000	
.4626	Community School Program	30,000	
.4628	Citizens Safety Council	15,000	238,405
.02	Special Services		
.2010	Professional Services	30,000	
.2011	City of Miami - Utility Rate Appeal	15,000	
.2012	County Armory	7,000	
.2013	Ambulance Services	325,000	
.2014	Codification of Metro Ordinances	15,000	
.2015	Audits	35,000	
.2016	Water and Sewer Program	48,000	
.2017	Legal Advertising	30,000	
.2210	Communications	220,000	
.2220	Utilities	290,131	
.2221	Streetlighting - Leased from FP&L	260,000	
.2222	Streetlighting - County Owned	100,000	
.2223	Streetlighting - City Transfer	298,356	
.2520	Employees Suggestion Awards	800	
.2710	Rent	104,000	
.8610	Replacement of Pool Cars	8,400	1,786,687
.03.1010	Reserve for Pay Plan Adjustment		3,672,686
.04	Fixed & Sundry		
.4120	Insurance	227,015	
.4140	Group Employees' Hospital & Life Insurance	600,000	
.4150	Workmen's Compensation	175,000	
.4220	Social Security	1,800,000	
.4995	Retirement - Previous Municipal Employees	26,000	
.4996	Death Benefits	1,400	
.4998	Legal Aid	75,000	
.4999	Law Library	142,500	3,046,915

EXHIBIT H

FINAL DECREE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY
IN CHANCERY
NO. 66C 9044

NISHAN PAUL,

Plaintiff,

vs.

DADE COUNTY, FLORIDA,
a political subdivision of the
State of Florida, et al.,

Defendants.

THIS CAUSE having come on for final hearing and the Court having heard the testimony presented by both parties and considered the evidence finds the following:

1. The Plaintiff, a Dade County taxpayer, is a man in his sixties who became an atheist when he was sixteen years of age and is still a non-Christian.

2. The Latin cross that will be installed on the Dade County Courthouse during the 1966 Christmas season is erected by a string of lights in a form outlining such a cross and is only lit at night after Courthouse hours and its installation, maintenance, lighting and removal will be completely paid for by the use of private funds ($840.00) donated by various individuals, and thus no part of the Plaintiff's tax moneys will be used; but if

his tax moneys were used, his share of the $840.00 cost would be infinitesimal.

3. The said cross is in the form of a religious symbol; however, it is placed on the Courthouse as one of the several Christmas decorations, and such decorations are for the public welfare since they are merely a means of expressing to the community as a whole a wish for a "Merry Christmas." Such expression is a secular one since the Christmas season has become more of a secular festival period when people celebrate with parties and gift-giving; thus, the true Christian connotation of Christmas has generally lost its original religious meaning. Certainly, a cross on the face of the Courthouse as a Christmas decoration can not offend a non-Christian any more than, or as much as, the Madonna and Child pictured on the face of the United States five-cent stamp which emphasizes the 1966 Christmas season. Therefore, it appears to the Court that the Courthouse decorative cross has a secular connotation and the mere fact that such decoration is in the form of a Latin cross does not abridge any provision of the Federal or Florida Constitutions.

The Court further finds that the Plaintiff is not damaged, has no standing to main this suit; that none of his rights, privileges or immunities vested by any applicable constitutional provision have been violated; and that the said decoration on the Courthouse does not violate any Federal or Florida constitutional provision; therefore it is

ORDERED, ADJUDGED and DECREED as follows:

1. The equities of this cause are not with the Plaintiff but are with the Defendants.

2. The prayers for injunctive relief are hereby denied.

3. The Plaintiff's complaint and this cause be and the same are hereby dismissed with prejudice to and at the cost of the Plaintiff.

DONE and ORDERED in Chambers, at Miami, Dade County, Florida, this 28 day of November, 1966.

RALPH O. CULLEN
CIRCUIT JUDGE

EXHIBIT I

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1967

CASE NO. 66-1088

NISHAN PAUL,

Appellant,

vs.

DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, et al.,

Appellees.

Opinion filed October 3, 1967.

An Appeal from the Circuit Court for Dade County, Ralph O. Cullen, Judge.

Hollander & Pestcoe, for appellant.

Thomas C. Britton, County Attorney and St. Julien P. Rosemond, Assistant County Attorney, for appellees.

Before CHARLES CARROLL, C.J., and BARKDULL and SWANN, JJ.

SWANN, Judge.

Nishan Paul, plaintiff below, appeals from an ad-

verse final decree by a chancellor of the Circuit Court of Dade County, Florida.

The plaintiff, Paul, filed his complaint for declaratory decree, and other relief, against the defendant, Dade County, Florida, and alleged, inter alia, that the County Commission of Dade County had appropriated tax derived funds from the general revenue for the purpose of erecting and maintaining a religious symbol, a cross, on a public building, the Dade County Courthouse, during the month of December, 1966. He alleged that he was a non-Christian and that the cross, as a religious symbol displayed on public property, constituted the establishment of religion, in violation of the First and Fourteenth Amendments to the United States Constitution, as well as the Florida Constitution.

The answer of the County generally denied the allegations of the complaint, but admitted that since 1955 a Latin cross, made by a string of lights and lighted only at night, had been placed on the south side of the courthouse during the Christmas season. It alleged that the cross was part of the Christmas decorations placed on the courthouse, and was used as a yule season decoration to wish the community well being, happiness and peace. It admitted that the form of a Latin cross can be used as a religious symbol, but alleged that it also had secular connotations, and that the Latin cross on the courthouse has a secular connotation as a yule season decoration.

The answer was filed on November 14, 1966; a final hearing was held on November 15, 1966, and the final decree herein appealed was rendered on November 28, 1966.

The acts which were sought to be enjoined were completed during the Christmas season of 1966. The record on appeal does not contain evidence of any public funds being appropriated for this purpose for the Christmas season of 1967, and it would appear that this cause might be moot.

The County Attorney has suggested in oral argument that the cause was moot, but requested the court to consider and decide the question involved because of the general public interest and importance of this matter. We have therefore decided to consider the questions involved herein. See Dehoff v. Imeson, 153 Fla. 553, 15 So.2d 258 (1943); Barrs v. Peacock, 65 Fla. 12, 61 So. 118 (1913), and Ervin v. Capitol Weekly Post, Inc., Fla. 1957, 97 So.2d 464.

The evidence reflects that this cross, together with other lights and decorations, was originally placed on the courthouse of Dade County, Florida at the request of members of the Miami Chamber of Commerce around 1955. This was done in order to help decorate the streets of Miami and attract holiday shoppers to the downtown area, rather than to establish or create a religious symbol, or to promote or establish a religion.

There was sufficient evidence in the record to justify the finding of the chancellor that the money for the erection, maintenance and removal of the lights for the Latin cross had been donated by private persons for the year 1966 and that there would be no public funds used in connection therewith.

Notwithstanding this, the appellant argues that even

if public funds were not used in the erection, maintenance and removal of the lighted cross, his constitutional rights have been violated by the erection of a religious symbol on the side of a public building, the Dade County Courthouse, which his taxes help to support.

The applicable constitutional criterion, as we divine it, is that set forth by the United States Supreme Court in Abington School District v. Schempp, 374 U.S. 203, 10 L.ed 2d 844, 83 S.Ct. 1560 (1963):

* * *

> "* * * The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. Everson v. Board of Education, 330 US 1, 91 L ed 711, 67 S Ct 504, 168 ALR 1392, supra; McGowan v. Maryland, supra (366 US at 442)." Id at 374 U.S. 222.

* * *

It has also been observed that many symbols, though religious in origin, have ceased to have religious meanings or have also acquired secular meanings. See Abington School District v. Schempp, supra. For example, the dove, the star, the fish, and three intertwined rings have

all had, or presently may have, some religious symbolism attached thereto. On the other hand, some have also acquired certain secular meanings.

The record does not indicate that this temporary string of lights forming a cross was used to support, aid, maintain or establish any religion or religious edifices. Its purpose was not to promote the participation by anyone in the affairs of any religious organizations or sect.

Consequently, we hold that under the Schempp test, this does not amount to the establishment of a religion in violation to the First Amendment, and that it does not amount to a religious activity, controlled, supported or influenced by the government as was found to exist in Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962). See also: State v. Morrison, 1952 La.App., 57 So.2d 238.

For these reasons, the final decree is Affirmed.

EXHIBIT J

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1967

Case No. 36,834
DISTRICT COURT OF APPEAL, THIRD DISTRICT

NISHAN PAUL,

Petitioner,

vs.

DADE COUNTY, FLORIDA, ETC., ET AL.,

Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy
TEST:
Sid J. White

Clerk, Supreme Court.

CC: Hon. W. P. Carter
Hon. E. B. Leatherman
Messrs. Hollander & Pestcoe
Hon. Thomas C. Britton

LIBRARY
SUPREME COURT, U. S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

Office-Supreme Court, U.S.
FILED
APR 13 1968
JOHN F. DAVIS, CLERK

No. 1216

NISHAN PAUL,

Petitioner,

vs.

DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, et al.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THOMAS C. BRITTON
County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

St. Julien P. Rosemond
First Assistant County Attorney
For the Respondent

INDEX

	Page
Introduction	1
Questions Presented	2
Statement of the Case	2
Argument in Opposition	10
1. PAUL DOES NOT HAVE A STANDING TO SUE.	10
2. DO THE COURTHOUSE CHRISTMAS DECORATIONS, INCLUDING THE LIGHTED LATIN CROSS, VIOLATE ANY FEDERAL CONSTITUTIONAL PROVISION?	13
1. General	13
2. Denial of Equal Protection	16
3. Establishment and Free Exercise of Religion	17
4. Exhibition of cross Not Unconstitutional	20
3. THE PETITION FOR CERTIORARI WAS NOT TIMELY FILED.	21
Conclusion	23
Certificate of Service	24

TABLE OF CASES

	Page
Ashe v. City of Boca Raton, Fla.App. 1961, 133 So.2d 122	11
Baer v. Kolmorgen, N.Y. 1958, 181 N.Y.S.2d 230	19
Boucher v. Novotny, Fla.App. 1958, 102 So.2d 132	12
Bradfield v. Roberts, 175 U.S. 291, 20 S.Ct. Re'r at page 121	19
Bryan v. City of Miami, Fla. 1951, 56 So.2d 924	11
Calvary Bible Presbyterian Church of Seattle v. Board of Regents of the University of Washington, (1967), 436 P.2d 189	19
Chamberlain v. Dade County Board of Public Instruction, Fla. 1962, 143 So.2d 21	20
Chamberlain v. Dade County Board of Public Instruction, (1964) 377 U.S. 402, 12 L.Ed. 407, 84 S.Ct. 1272	21
Chamberlain v. Dade County Board of Public Instruction, 17 Fla.Supp. 183, 143 So.2d 21, 83 Sup.Ct. 1864, 160 So.2d 97, 84 Sup.Ct. 1272, 171 So.2d 585	22
City of New Haven v. Town of Terrington, Conn. 1945, 43 A.2d 455	20

TABLE OF CASES (cont.)

	Page
Doremus v. Board of Education, 342 U.S. 429, 96 L.Ed. 475, 72 S.Ct. 394	11
Everson v. Board of Education of the Township of Ewing, 330 U.S. 1-74, 91 L.Ed. 711	17
Fenske v. Coddington, Fla. 1952, 57 So.2d 452	18
Fowler v. State of Rhode Island, (1953) 345 U.S. 67	19
Gerhardt v. Heid, No.Dak. 1936, 267 N.W. 127	20
Guernsey v. Haley, Fla.App. 1958, 107 So.2d 184	12
Koerner v. Borck, Fla. 1958, 100 So.2d 398	11
Lake v. Lake, Fla. 1958, 103 So.2d 639	22
Lowe v. City of Eugene, Oregon Circuit Court Case No. 76314	21
McGowan v. State of Maryland, 366 U.S. 420, 6 L.Ed.2d 393, 81 S.Ct. 1101	15
Murray v. Comptroller of the Treasury Maryland, Md. 1966, 216 A.2d 897	16
Nash v. Florida Industrial Commission, __U.S.__, 19 L.Ed.2d 438, 88 S.Ct. 362	22

TABLE OF CASES (cont.)

	Page
Protestants and Other Americans United for Separation of Church and State v. O'Brien, D.C. 1967, 272 F.Supp. 712	21
Rawlings v. Butler, Ky.App. 1956, 290 S.W.2d 801	20
Rector, Etc., of Holy Trinity Church, (1892) 121 S.Ct. 511	20
School District of Abington Township v. Schempp, 374 U.S. 203, 10 L.Ed.2d 844, 83 S.Ct. 1560	19
Southside Estates Baptist Church v. Board of Trustees, Fla. 1959, 115 So.2d 697	18
State v. Boyd, Ind. 1940, 28 N.E.2d 256	20
Zorach v. Clauson, 343 U.S. 306, 96 L.Ed. 954, 72 S.Ct. 476	15
FLORIDA CONSTITUTION	
Section 4(2), Article V	8
STATUTES	
28 U.S.C.A., Section 1257(3)	21
28 U.S.C.A., Section 2101(c)	22
FLORIDA APPELLATE RULES	
1.3	9
4.5(C)(6)	9

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1216

NISHAN PAUL,

Petitioner,

vs.

DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, et al.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

This is the temporary nocturnal courthouse decorative Christmas cross case instituted by Paul claiming such cross violated the establishment of religion clause. The Circuit Court of Dade County, Florida, found to the contrary and declared that the courthouse Christmas decorations did not infringe upon Paul's constitutional rights, immunities and privileges. The declaratory decree was affirmed by the District Court of Appeal of Florida, Fla. App. 1967, 202 So.2d 833, and certiorari denied by Fla. Sup.Ct. — So.2d — ; obviously, because it did not have jurisdiction.

We will use italics for emphasis, "County" for respondent, and, as indicated above, "Paul" for petitioner.

Right here and now, it is admitted that the latin cross is in the form of a Christian symbol, as is most every sign, animal, plant and object, as may be seen in George Ferguson's "Signs and Symbols in Christian Art". However, this admission does not confess that the nocturnal courthouse cross, one part of the courthouse Christmas decorations, is devoid of a secular connotation or that its purpose is to establish a religion, prohibit the free exercise thereof, deny equal protection of the law, or to interfere with Paul's religious opinions and rights of conscience.

QUESTIONS PRESENTED

1. DOES PAUL HAVE A STANDING TO SUE?

2. DO THE COURTHOUSE CHRISTMAS DECORATIONS, INCLUDING THE LIGHTED LATIN CROSS, VIOLATE ANY FEDERAL CONSTITUTIONAL PROVISION?

3. WAS THE PETITION FOR CERTIORARI TIMELY FILED?

STATEMENT OF THE CASE

The complaint seeks a declaratory decree adjudicating that the expenditure of public funds, in order to place lights outlining a latin cross, a Christmas decoration, on the south side of the courthouse during the 1966 Christmas

season, violates both Federal and State Constitutions concerning the separation of church and state.

Motion to dismiss was not ruled upon; answer was filed; and the case went to final hearing. Thereupon, the trial court entered its declaratory decree, the pertinent portions being quoted as follows:

> "1. The Plaintiff, a Dade County taxpayer, is a man *in his sixties who became an atheist when he was sixteen years of age and is still a non-Christian.*
>
> "2. The Latin cross that will be installed on the Dade County Courthouse during the 1966 Christmas season is erected by a string of lights in a form outlining such a cross and is *only lit at night after Courthouse hours* and its installation, maintenance, lighting and removal will be completely *paid for by the use of private funds ($840.00)* donated by various individuals, and thus *no part of the Plaintiff's tax moneys will be used;* but if his tax moneys were used, his share of the $840.00 cost would be *infinitesimal.*
>
> "3. The said cross is in the form of a religious symbol; however, it is placed on the Courthouse as one of the *several Christmas decorations,* and such decorations are for the public welfare since they are merely a means of expressing to the community as a whole a wish for a 'Merry Christmas.' Such expression is a *secular one* since the Christmas season has become more of a secular festival period when people celebrate with parties

and gift-giving; thus, the true Christian connotation of Christmas has generally lost its original religious meaning. Certainly, a cross on the face of the Courthouse as a Christmas decoration cannot offend a non-Christian any more than, or as much as, *the Madonna and Child pictured on the face of the United States five-cent stamp* which emphasizes the 1966 Christmas season. Therefore, it appears to the Court that the Courthouse decorative cross has *a secular connotation* and the mere fact that such decoration is in the form of a Latin cross does not abridge any provision of the Federal or Florida Constitutions.

"The Court further finds that the Plaintiff is not damaged, has no standing to maintain this suit; that none of his rights, privileges or immunities vested by any applicable constitutional provision have been violated; and that the said decoration on the Courthouse does not violate any Federal or Florida constitutional provision; . . . ."

Thereupon Paul took his appeal to the District Court of Appeal without success.

Additional facts were found by the District Court so we here quote portions of its opinion as follows:

"The answer of the County generally denied the allegations of the complaint, but admitted that since 1955 a Latin cross, made by a string of lights and lighted only at night, had been placed on the south side of the courthouse during the Christmas season. It alleged that the cross was

part of the Christmas decorations placed on the courthouse, and was used as a yule season decoration to wish the community well being, happiness and peace. It admitted that the form of a Latin cross can be used as a religious symbol, but alleged that it also had secular connotations, and that the Latin cross on the courthouse had a secular connotation as a yule season decoration.

"The answer was filed on November 14, 1966; a final hearing was held on November 15, 1966, and the final decree herein appealed was rendered on November 28, 1966.

"*The acts which were sought to be enjoined were completed during the Christmas season of 1966.* The record on appeal does not contain evidence of any public funds being appropriated for this purpose for the Christmas season of 1967, and it would appear that this cause might be moot.

"The County Attorney has suggested in oral argument that the cause was moot, but requested the court to consider and decide the question involved because of the general public interest and importance of this matter. We have therefore decided to consider the questions involved herein. See Dehoff v. Imeson, 153 Fla. 553, 15 So.2d 258 (1943); Barrs v. Peacock, 65 Fla. 12, 61 So. 118 (1913), and Ervin v. Capitol Weekly Post, Inc., Fla. 1957, 97 So.2d 464.

"The evidence reflects that this cross, together with other lights and decorations, *was originally*

placed on the courthouse of Dade County, Florida at the request of members of the Miami Chamber of Commerce around 1955. This was done in order to *help decorate the streets of Miami and attract holiday shoppers to the downtown area, rather than to establish or create a religious symbol, or to promote or establish a religion.*

"There was *sufficient evidence* in the record *to justify the finding* of the chancellor *that the money for the erection, maintenance and removal of the lights for the Latin cross had been donated by private persons* for the year 1966 and that there *would be no public funds used in connection therewith.*

"Notwithstanding this, the appellant argues that even if public funds were not used in the erection, maintenance and removal of the lighted cross, his constitutional rights have been violated by the erection of a religious symbol on the side of a public building, the Dade County Courthouse, which his taxes help to support.

"The applicable constitutional criterion, as we define it, is that set forth by the United States Supreme Court in Abington School District v. Schempp, 374 U.S. 203, 10 L.ed 2d 844, 83 S.Ct. 1560 (1963):

'* * * *

'* * * The test may be stated as follows: what are the purpose and the primary effect of the

enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. Everson v. Board of Education, 330 US 1, 91 L ed 711, 67 S Ct 504, 168 ALR 1392, supra; McGowan v. Maryland, supra (366 US at 442).' Id at 374 U.S.222.

* * *,

"It has also been observed that many symbols though religious in origin, have *ceased to have religious meanings or have also acquired secular meanings.* See Abington School District v. Schempp, supra. For example, the dove, the star, the fish, and three intertwined rings have all had, or presently may have, some religious symbolism attached thereto. On the other hand, some have also acquired certain secular meanings.

"The record does not indicate that this temporary string of lights forming a cross was used to support, aid, maintain or establish any religion or religious edifices. Its purpose was not to promote the participation by anyone in the affairs of any religious organizations or sect.

"Consequently, we hold that under the Schempp test, this does not amount to the establishment of a religion in violation of the First Amendment,

> and that it does not amount to a religious activity, controlled, supported or influenced by the government as was found to exist in Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962). See also: State v. Morrison, 1952 La.App., 57 So.2d 238.
>
> "For these reasons, the final decree is
>
> "Affirmed."

It is well to note that this was not a class suit and only challenged the proposed 1966 Christmas decorations not any other. Therefore, any reference in Paul's "Motion to Enlarge the Record and/or Take Judicial Knowledge"—with documents attached thereto (R.214-225; Appendix Exhibit F) pertaining to the County's 1967-68 budget should be disregarded as the same is de hors the record and further the Florida Supreme Court denied the motion. Actually it proves nothing and only that the County's budget contained an amount for "Courthouse Christmas decorations."

Paul, after failing in the District Court of Appeal, petitioned the Supreme Court of Florida upon the "conflict theory" (R.184-213); i.e., pursuant to that portion of Section 4(2) Article V, Florida Constitution, which provides:

> "The supreme court may review by certiorari any decision of a district court of appeal . . . that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law . . ."

The Florida Supreme Court was compelled to deny the writ because the cases relied upon by the petition for conflict supported the lower court's decision; i.e., there was no conflict.

The Court holding it was without jurisdiction referred to Florida Appellate Rule 4.5(C)(6) (R.227) which is an implementation of the above jurisdictional provision, the pertinent portion which reads:

> "Where any decision of a district court of appeal (1) affects a class of constitutional or state officers, or (2) passes upon a question certified by such district court to be of great public interest, or (3) *is in direct conflict with a decision of another district court of appeal or of the Supreme Court on the same point of law*, petition may be filed with the Supreme Court to issue a writ of certiorari to review such decision."

The decision of the District Court of Appeal of Florida, Third District, was rendered and became final on October 3, 1967 as no application for rehearing was filed in that Court and Florida Appellate Rule 1.3 provides:

> "'*Lower Court*' means the court or agency, board, commission or body whose decision, judgment, decree or order is being reviewed or whose act is in question."

> "'*Rendition*' of a judgment, decision, order or decree means that it has been reduced to writing, signed and made a matter of record, or if recording is not required then filed. A paper is deemed

to be recorded when filed with the clerk and assigned a book and page number. Where there has been filed in the lower court a timely and proper motion or petition for a new trial, for a rehearing, or other timely post-trial motion or petition permitted by the Rules, the decision, judgment, order or decree shall not be deemed rendered until such motion or petition is disposed of."

Therefore, the petition filed in this Court, not being docketed until March 9, 1968, was filed one hundred and fifty eight (158) days after the decision sought to be reviewed was rendered by the highest court of this State in which a decision could be had; i.e., the District Court of Appeal of Florida, Third District.

ARGUMENT IN OPPOSITION

POINT I

PAUL DOES NOT HAVE A STANDING TO SUE.

The facts clearly show (R.15-41) that Paul has lived in Dade County for over fifteen years; i.e., prior to the first Courthouse cross in 1955; that he did not even know of the cross until several years ago and did nothing about it then. Actually, he does not even contend he has ever seen the cross. Certainly, he does not contend, nor even testify that it might make a Christian out of him. No; he is 65 years of age, well convinced there is no God, and nothing is going to change his beliefs. He does not even claim to have children who might be converted by the cross. He just does not like the Courthouse cross because he thinks it is unconstitutional. As a taxpayer he is not damaged, even if

private funds had not erected and maintained the cross. His portion of the cost of the cross, if private funds had not been used, is so miniscule as to be incomputable. Please see *Koerner v. Borck*, Fla. 1958, 100 So.2d 398, and in *Bryan v. City of Miami*, Fla. 1951, 56 So.2d 924, the Florida Supreme Court held that where the contested expenditure had already been made a taxpayer had no standing to sue.

As in *Doremus v. Board of Education*, 342 U.S. 429, 96 L.Ed. 475, 72 S.Ct. 394, wherein an attack was launched against a state statute providing for Bible reading in public schools, here we have a case where the "... sole purpose and the only function of..." Paul is to "... assume the role of actor(s) so that there may be a suit which will invoke a court ruling upon the constitutionality of the..." Christmas courthouse cross. In *Doremus*, this Court released jurisdiction for lack of standing to sue.

The same reasoning and result was obtained in *Ashe v. City of Boca Raton*, Fla.App. 1961, 133 So.2d 122, wherein the Court said on page 124:

> "The Declaratory Judgments Act, Florida Statutes, Chapter 87 F.S.A., may not be invoked if it appears that there is no bona fide dispute with reference to a present justiciable question. Thus in a taxpayers' suit seeking declaratory relief against some action of the governing authority of a municipal corporation, the complaint does not present a justiciable case if it fails to allege facts clearly showing that the action sought to be forestalled or nullified will result in a wrongful increase of taxes or in some special injury to the plaintiffs apart from other

members of the community. *There must be an existing adverse interest.* It follows that if the question posed for adjudication is moot or premature, or if the relief sought is merely to secure an advisory opinion of the court, the proceeding is not judicial in nature and therefore not properly within the compass of the Declaratory Judgments Act. These principles are well settled. See Ready v. Safeway Rock Co., 1946, 157 Fla. 27, 24 So.2d 808; May v. Holley, Fla. 1952, 59 So.2d 636; Pirtle v. City of Titusville, Fla. App. 1958, 101 So.2d 397; Guernsey v. Haley, Fla.App. 1958, 107 So.2d 184; Colby v. Colby, Fla.App. 1960, 120 So.2d 797; 52 Am.Jur., Taxpayers' Actions, Section 3."

Please also compare *Guernsey v. Haley*, Fla.App. 1958, 107 So.2d 184 and *Boucher v. Novotny*, Fla.App. 1958, 102 So.2d 132.

Furthermore, since Paul did not testify that he had ever seen the cross, which can only be seen at night after the courthouse is closed, and that a cross on an Army Chaplin's collar is not offensive to him (R.34) the latin cross used merely as part of the courthouse Christmas decorations, cannot interfere with his religious opinions or rights of conscience. In other words since the cross was financed with private funds, since, if public funds were used, his share would have been only 24/100 of a cent, and since he is not damaged at all, much less specially damaged, he has no standing to sue.

POINT II

DO THE COURTHOUSE CHRISTMAS DECORATIONS, INCLUDING THE LIGHTED LATIN CROSS, VIOLATE ANY FEDERAL CONSTITUTIONAL PROVISION?

1. General.

First we invite the Court's attention to the history of the courthouse cross found in the transcript of testimony (R.74-79). Therein it is undisputed that the cross was the idea of private citizens who obtained moneys from the County Commission to provide Christmas decorations, not to hold religious services or to induce non-believers into the Christian world. And, why a cross? Was it thought up because it was a Christian symbol? Obviously, no; as may be seen from the testimony of Mr. Berke, who was and is in the business of building displays, exhibits and decorations. His testimony was, inter alia: (R.76-78)

> "Q. How did you happen to be employed to put the cross up in 1955?
>
> "A. I was—oh, working with the Retail, Miami Retail Merchants Division of the Miami Chamber of Commerce from about 1949 doing the Christmas street decorations. In 1955 certain, Mr. Skip Shepard, who is now, I think Manager of Dupont Plaza Hotel, was then Manager of the Leamington Hotel.
>
> "He was Chairman of that group. He was interested in how they could improve the decorations, and I think he went and appealed to the

City or County Commissioners in order to get some money to help decorate the streets.

"In these conditions that this money was given, it had to go from all the way up through Flagler Street, past the railroad and include the Courthouse.

"It was then decided by the merchants that they should do something with the Courthouse. Ideas were worked up, and the idea, or the simple thought was, we will light the windows and just create a cross. That has been done generally all over the Country.

"We figured that would be nothing to that part of the decorations, but we did run into a heck of a thing.

"We found we couldn't go up to the top because of the jail was up there, and we couldn't light the windows.

"So since we committed ourselves—

"MR. PESTCOE: Excuse me. I don't mean to interrupt, your Honor, but I am going to interpose an objection. That is all very interesting, but it doesn't have any relevancy.

"BY MR. ROSEMOND:

"Q. Who paid you to put the cross up?
"A. I got paid directly from the merchants.

"Q. They got the money from the County?
"A. That is right, yes.

"Q. It was their idea?
"A. They had developed the idea.

"MR. ROSEMOND: You may inquire.

"MR. PESTCOE: No questions, your Honor.'

In other words, the cross idea was purely a part of the Christmas decorations and, as Bishop Duncan testified (R.63-73) merely to wish the community a "Merry Christmas," a secular device for the benefit of the public. Actually, no witness contradicted Bishop Duncan. He was the only one who testified as to the significance of the decorations taken as a whole. He said the decorations were for a secular purpose; i.e., wishing the public seasons greetings.

The courthouse cross is placed there for the benefit of all taxpayers. It wishes them well during a holiday season. We submit that the Christmas season and its holidays are just as much if not more secular than Sunday. Sunday, which was set aside as a non-work day originally by the Lord, is a secular holiday. *McGowan v. State of Maryland*, 366 U.S. 420, 6 L.Ed.2d 393, 81 S.Ct. 1101. Thus it could not be contended that the State or Federal Constitutions are being violated because school teachers are being paid by the taxpayers during the non-working days of the Christmas season or even on Thanksgiving Day. Please also see *Zorach v. Clauson*, 343 U.S. 306, 96 L.Ed. 954, 72 S.Ct. 476, holding that public schools could "close its doors or suspend its operations as to those who

wanted to repair to their religious sanctuary for worship or instruction"; i.e., close for religious holidays. That case also held that the New York City program, which permits students to be released from school to attend religious courses, was constitutional and did not coerce anyone to attend church or to observe a religious holiday or to take religious instructions even though there were students who were compelled to stay in school while others were excused to observe their religions.

2. **Denial of Equal Protection.**

The complaint does not apprise the reader as to how the plaintiff, petitioner here, is denied equal protection of the law. There is no allegation that, upon request, the County Commission has refused to place on the courthouse or any other public building an insignia that may be classified as a non-Christian symbol. In *Murray v. Comptroller of the Treasury Maryland*, Md. 1966, 216 A.2d 897, certiorari recently denied by this Court, the Maryland court in holding the following tax exemption statute constitutional:

> "'(4) Churches, parsonages, etc.— Houses and buildings used exclusively for public worship, and the furniture contained therein, and any parsonage used in connection therewith, and the grounds appurtenant to such houses buildings and parsonages and necessary for the respective uses thereof.'"

said it did not deprive anyone of equal protection, since all houses of worship, including those that did not believe in a Supreme Being were exempt. Here, there is no showing of

discrimination. Why, even the use of public funds to pay the busfare of students attending parochial schools was held constitutional and did not violate the equal protection clause, *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1-74, 91 L.Ed. 711. There are other cases of similar import which we shall cite infra.

3. Establishment and Free Exercise of Religion.

The guidelines for determining whether or not a law establishes a religion or prevents the full exercise of religious beliefs is stated by Justice Black in the *Everson* case, *supra*, as follows:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of

> religion by law was intended to erect 'a wall of separation between Church and State.' Reynolds v. United States, supra, (98 US at 164, 25 L.ed 249)"

As emphasized above, Paul is not being forced or even coerced to believe in Christianity by the presence of the cross. The cross does not support any religious activity or any religious institution. No money is being used to aid, support or maintain any religion or any religious edifice, or institution such as a church school or charity. By placing the lighted cross on the courthouse, Dade County is not participating in the affairs of any religious organization or sect. No, under its power to promote the public welfare, Dade County is wishing its citizens a merry Christmas season.

In the *Everson* case, *supra*, this Court held that governmental funds could be expended to reimburse parents of children attending parochial schools for their transportation to and from such schools, as it did not establish a religion but was for the public welfare.

The mere fact that the courthouse cross may be a Christian symbol, so long as its purpose is secular (for public welfare), the expenditure of public funds is not even prohibited, as pointed out in the *Zorach* and *Murray* cases, supra.

The Florida Supreme Court has held that temporary church use of public property was not unconstitutional. Please see *Southside Estates Baptist Church v. Board of Trustees*, Fla.1959, 115 So.2d 697. Please also see *Fenske v. Coddington*, Fla. 1952, 57 So.2d 452; *Koerner v. Borck*,

Fla. 1958, 100 So.2d 398; and *Bradfield v. Roberts*, 175 U.S. 291, 20 S.Ct. Rep'r at page 121.

The Nativity Scene may be displayed on public school property during the Christmas holiday period without infringing upon any of the constitutional safeguards concerning the establishment of religion, as may be seen from *Baer* v. *Kolmorgen*, N.Y. 1958, 181 N.Y.S.2d 230. In that case the Creche was nothing but a religious Christmas symbol and it was on public property at Christmas time. On the other hand, the cross is not on the courthouse during Easter time when Christ was crucified; and all witnesses agreed that is why it became a Christian symbol. No, the cross is installed on the courthouse only at Christmas time and thus obviously does not portray His birth. The courthouse cross has a secular connotation as a matter of law, which is supported by the evidence in this case.

It is well to note that in *Fowler v. State of Rhode Island*, (1953) 345 U.S. 67, this Court held that public property could be used for church services.

Even in the case of *School District of Abington Township v. Schempp*, 374 U.S. 203, 10 L.Ed.2d 844, 83 S.Ct. 1560, wherein the reading of the Bible each day in public school was held unconstitutional, the Court said that the Bible could be taught in public schools from a secular view point and such was concluded in *Calvary Bible Presbyterian Church of Seattle v. Board of Regents of the University of Washington*, 1967, 436 P.2d 189.

Clearly the Bible is a religious symbol and, yes, more than a symbol; it contains religious teachings. Now, if the Bible can be taught in the public schools as outlined

by the courts; a fortiori, the courthouse cross together with other decorations, can be used for the purpose of wishing the community a happy holiday season.

We also submit that it is not unconstitutional for the Federal Government to spend public funds to print on the dollar bill "In God We Trust" or to place on treasury notes and Federal Buildings of the United States the Great Seal. Such seal contains a religious symbol above the pyramid; i.e., the All-Seeing Eye of God. A fortiori, the courthouse temporary cross is not unconstitutional. Please see *Rector, Etc., of Holy Trinity Church* (1892) 121 S.Ct. 511.

4. **Exhibition of cross not Unconstitutional.**

In *State v. Boyd*, Ind. 1940, 28 N.E.2d 256, the plaintiff objected to tax moneys being used to pay teachers of the Catholic faith (nuns) to teach in a Catholic owned building used as a public school; the Court held such expenditure valid although the teaching sisters gave their excess earnings to the Church and the school room contained pictures of the Holy Family and the Crucifixion.

Similar is *Gerhardt v. Heid*, No.Dak. 1936, 267 N.W. 127 and in *Rawlings v. Butler*, Ky.App. 1956, 290 S.W.2d 801, the Court held it was not unconstitutional to employ members of a religious order to teach in public schools, even though they wore religious garb and emblems while teaching. Please also see *City of New Haven v. Town of Terrington*, Conn. 1945, 43 A.2d 455.

It is well to point out the Florida Supreme Court in *Chamberlain v. Dade County Board of Public Instruction*, Fla. 1962, 143 So.2d 21, did not hold the temporary dis-

play, during the Christmas season, of religious symbols in public schools which were made by school children, unconstitutional. Nor did it hold that the holding of baccalaureate services or the obtaining of a religious census unconstitutional; and neither did this Court. Please see *Chamberlain v. Dade County Board of Public Instruction*, (1964) 377 U.S. 402, 12 L.ed 407, 84 S.Ct. 1272.

We also invite attention to *Protestants and Other Americans United for Separation of Church and State v. O'Brien*, D.C. 1967, 272 F.Supp. 712, holding the Christmas stamp picturing Memling's "Madonna and Child with Angels" constitutional.

We might add, contrary to the petitioner, that the decision of the District Court of Appeal of Florida, Third District, does not conflict with any other decision in point. The case of *Lowe v. City of Eugene*, (Oregon Circuit Court Case No. 76314) is not in point. In that case there was involved a permanent concrete cross erected on a hillside city park overlooking the city. The courthouse cross was a temporary one. Moreover, the *Eugene* case is now on appeal and as yet not decided by the Oregon Appellate Court.

POINT III

THE PETITION FOR CERTIORARI WAS NOT TIMELY FILED.

Paul seeks this Court's jurisdiction under the auspices of 28 U.S.C.A., Section 1257(3) but he did not file his petition until 158 days after the decision sought to be reviewed was rendered by the highest court of this State in

which a decision could be had; i.e., the District Court of Appeal of Florida, Third District.

It is true that Paul sought the jurisdiction of the Supreme Court of Florida; however, that Court did not decline jurisdiction, but rather, it held it did not have jurisdiction. (R. 227). Moreover, Paul should have known that the Florida Supreme Court did not have jurisdiction as the cases he relied upon for conflict support the County's position. They were *Chamberlain v. Dade County Board of Public Instruction*, 17 Fla.Supp. 183, 143 So.2d 21, 83 Sup.Ct. 1864, 160 So.2d 97, 84 Sup.Ct. 1272, 171 So.2d 585 and *Southside Estates Baptist Church v. Board of Trustees*, Fla. 1959, 115 So.2d 697 (R. 184-214).

28 U.S.C.A., Section 2101(c) provides that the writ must be applied for within 90 days, however, for good cause may be extended for an additional 60 days. No extension of time was asked for by Paul and more than 150 days has expired since the decision here sought to be reviewed.

As previously stated the jurisdiction of the Supreme Court of Florida was frivolously sought pursuant to the "conflict theory" when there was no conflict and that Court in *Lake v. Lake*, Fla. 1958, 103 So.2d 639, made it plain the District Courts of Appeal were courts of final appellate jurisdiction. This Court recognized such in *Nash v. Florida Industrial Commission*, ___ U.S. ___, 19 L.ed.2d 438, 88 S.Ct. 362.

Actually Paul admits the District Court of Appeal was the highest court of this state in which the decision in this case could be had. His motion for certifying the

record to this Court was filed in that Court not the Florida Supreme Court. Moreover, his petition is directed to the District Court and the Florida Supreme Court. He does not seek a review of the latter court's denial of jurisdiction but only the District Court's decision.

We therefore respectfully submit this Court does not even have discretionary jurisdiction as the time for filing the petition expired many days before it was lodged in this Court.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

THOMAS C. BRITTON
Dade County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

By St. Julien P. Rosemond
St. Julien P. Rosemond
First Assistant County Attorney
For the Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari was served by mail upon ALFRED I. HOPKINS, ESQ., Attorney for Petitioner, 1701 Meridian Avenue, Miami Beach, Florida, and HOWARD J. HOLLANDER, ESQ., and BERNARD C. PESTCOE, ESQ., Of Counsels for Petitioner, 708 City National Bank Building, Miami, Florida 33130, this 12 day of April, 1968.

First Assistant County Attorney

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 25 1968
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1216

NISHAN PAUL,

Petitioner

vs.

DADE COUNTY, FLORIDA, a Political Subdivision of the State of Florida, et al.

Respondent

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALFRED I. HOPKINS
Attorney for Petitioner
1701 Meridian Avenue,
Miami Beach

HOWARD J. HOLLANDER
BERNARD C. PESTCOE
Of Counsel
708 City Natl. Bank Bldg.
Miami, Florida

INDEX

	Page
REPLY TO RESPONDENT'S BRIEF	1
POINT I: DOES PAUL HAVE STANDING TO SUE?	2
POINT II: DO THE COURTHOUSE CHRISTMAS DECORATIONS, INCLUDING THE LIGHTED LATIN CROSS, VIOLATE ANY FEDERAL CONSTITUTIONAL PROVISION?	6
POINT III: WAS THE PETITION FOR CERTIORARI TIMELY FILED?	9
CERTIFICATE OF SERVICE	13

TABLE OF AUTHORITIES

	Page
Abington School District v. Schempp, 374 U.S. 203 (1963)	8
American Railway Express Co. v. Levee, 263 U.S. 19	10
Bacon v. Crespi, 141 So.2d 823	6
Chamberlain v. Dade County Board of Public Instruction (1964) 377 U.S. 402, 12 L.Ed. 407, 84 S.Ct. 1272	8
Cochran v. Louisiana State Board of Education, 50 S.Ct. 335 (1930)	4
Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 43 S.Ct. 597	4
Crampton v. Zabriskie, et al, 101 U.S. 601, 609, 25 L.Ed. 1070	3
Doremus v. Board of Education, 342 U.S. 429, 72 S.Ct. 394	2
Everson v. Board of Education, 330 U.S. 1 (1947)	4
Fowler v. State of Rhode Island (1953) 345 U.S. 67	8
Murray v. Comptroller of the Treasury Maryland, Md. 216 A.2d 897 (1966)	7
Nash v. Florida Industrial Commission, 88 S.Ct. 362	10
Rosenhouse v. 1950 Spring Term Grand Jury, 56 So.2d 445	5

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1216

NISHAN PAUL,

Petitioner

vs.

DADE COUNTY, FLORIDA, a Political Subdivision of the State of Florida, et al.

Respondent

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner, NISHAN PAUL, filed his Petition for WRIT OF CERTIORARI in the United States Supreme Court on March 9, 1968. The Respondent, DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, et al., certified for mailing its brief in opposition to Petitioner's Petition for Writ of Certiorari on April 12, 1968. The following is the Petitioner's Reply to the Respondent's Brief in Opposition.

For purposes of clarity, we shall examine the "Questions Presented" by the Respondent in the chronological order they appear in the Respondent's Brief. The Petitioner will utilize italics for emphasis.

POINT I

DOES PAUL HAVE STANDING TO SUE?

The thrust of the Respondent's argument in Point I is that the Petitioner, as a Dade County taxpayer, lacks standing to challenge the expenditure of County Tax funds under Florida case law. In addition, the Respondent cites the U.S. Supreme Court opinion in *Doremus v. Board of Education*, 342 U.S. 429, 72 S.Ct. 394. The Petitioner herewith offers his rebuttal.

First, the U.S. Supreme Court determines for itself, within the confines of the United States Constitution, its own requirements for Standing, and, therefore, State Court pronouncements as to U.S. Supreme Court jurisdiction in terms of Standing, are and always have been regarded as *advisory*. In fact, the very case cited by the Respondent, *Doremus v. Board of Education* (Supra), makes this point abundantly clear. The opinion stated on page 397:

> "We do not undertake to say that a State Court may not render an opinion on a Federal Constitutional Question even under such circumstances that can be regarded only as *advisory*. But, because our own jurisdiction is cast in terms of 'case or controversy,' we cannot accept as the basis for review, nor as the basis for con-

clusive disposition of an issue of Federal law without review, any procedure which does not constitute such."

With this principle firmly established, we turn to the case of *Crampton v. Zabriskie*, et al. 101 U.S. 601, 609, 25 L.Ed. 1070. The factual situation in this case is identical to that of the case at bar in reference to the question of Standing. Does a County Taxpayer have Standing to challenge expenditure of county funds before the United States Supreme Court as determined by Federal requirements of "case or controversy". The opinion, delivered by Mr. Justice Field, stated in part:

> "It does not appear that any attention was paid either by the Board or Crampton, to this judgment. The Board did not reconvey or offer to reconvey the land to Crampton; nor did the latter return or offer to return to the Board the bonds received by him. But, on the contrary, Crampton commenced an action in the Circuit Court of the United States to enforce their payment. . . . The facts here stated are not contradicted; . . ."
>
> "*Of the right of resident tax payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they in common with other property holders of the county may otherwise be compelled to pay, there is at this day no serious question.* The right has been recognized by the state courts in numerous cases; and from the nature of the powers exer-

> cised by municipal corporations, the great danger of their abuse and the necessity of prompt action to prevent irremediable injuries, it would seem eminently proper for courts of equity to interfere upon the application of the tax payers of a county to prevent the consummation of a wrong, when the officers of those corporations assume, in excess of their powers, to create burdens upon property holders. Certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the State or county, there would seem to be no substantial reason why a bill by or on behalf of individual tax payers should not be entertained to prevent the misuse of corporate powers. The courts may be safely trusted to prevent the abuse of process in such cases. Those who desire to consult the leading authorities on this subject will find them stated or referred to in Mr. Dillon's excellent treatise on the Law of Municipal Corporations."

As further support for this principle, please see *Everson v. Board of Education*, 330 U.S. 1 (1947) and *Cochran v. Louisiana State Board of Education*, 50 S.Ct. 335 (1930) wherein Standing presented no barrier to the hearing of taxpayers' suits.

Thus, the Respondent has completely misinterpreted *Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447, 43 S.Ct. 597 which stated simply that a taxpayer's interest in the *Federal Treasury* was too remote to challenge a *Federal Appropriation Act*. The case at bar involves that of a County taxpayer challenging County expenditure of

tax funds, after all State Court remedies have been exhausted.

Secondly, even assuming that Standing as interpreted by the Florida Supreme Court is an issue before this Court, the Respondent is in complete error as to its interpretation of the Florida Supreme Court position pursuant to the Florida Declaratory Judgment Act. In *Rosenhouse v. 1950 Spring Term Grand Jury*, 56 So.2d 445, the Florida Supreme Court made its position clear on Page 448:

> "The appellant has alleged that he is a taxpayer and that the challenged acts authorize the expenditure of public moneys; that he is in doubt as to the constitutionality of said legislative enactments and, consequently, has grave doubt with reference to the legality of the expenditure of public funds as authorized by the statutes which he deems unconstitutional.
>
> "The Circuit Court is authorized to adjudicate the question of the constitutionality of a statute in a declaratory judgment proceeding. See McInerney v. Ervin, Fla. 46 So.2d 458. *Indeed, such procedure has been used on innumerable occasions to attack the constitutionality of a statute or charter and the appellant as a taxpayer has the right to institute such action because of his interest in the expenditure of public moneys.* Mitchell v. Consolidated School District #201, 17 Wash. 2d 61, 135 P.2d 79, 146 A.L.R. 612. Almquist v. City of Biwabik, 224 Minn. 503, 28

N.W. 2d 744; Beuchamp v. Silk, 275 Ky. 91, 120 S.W. 2d 765.

"We approve the statement made by the Supreme Court of Alabama in the case of White v. Manassa, 252 Ala. 396, 41 So.2d 395, 397, 'The test of the sufficiency of a complaint in a declaratory judgment proceeding is not whether the complaint shows that the plaintiff will succeed in getting a declaration of rights in accordance with his theory and contention, but whether he is entitled to a declaration of rights at all.' "

The *Rosenhouse* case was approved and followed in *Bacon v. Crespi* 141 So.2d 823.

In reference to the Respondent's position that private funds were used, or if public funds were used, the Petitioner's contribution was minimal, please see pages 12 and 13 of the Petitioner's Petition for Writ of Certiorari wherein the Respondent's contention has previously been exposed as sham.

POINT II

DO THE COURTHOUSE CHRISTMAS DECORATIONS, INCLUDING THE LIGHTED LATIN CROSS, VIOLATE ANY FEDERAL CONSTITUTIONAL PROVISION?

On page 15 of the Respondent's Brief, the Respondent asks the Court to take cognizance of Bishop Duncan's testimony referring to a "secular purpose" and "wishing the public seasons greetings". What the Respondent failed to

point out is that the Petitioner produced five (5) clergymen all testifying as experts on theology, and all testifying, after viewing exhibit 5 entered into evidence (exhibit "C" in the appendix of the Petitioner's Petition for Writ of Certiorari) that the Latin cross, as displayed on the Dade County Courthouse, does not represent "seasons greetings" or "Merry Christmas", but, in fact, is a Christian symbol representing scorn, rejection, humiliation and death.

On page 16 of the Respondent's Brief, the Respondent denies that the Equal Protection argument made by the Petitioner is valid, and in so doing, cites *Murray v. Comptroller of the Treasury Maryland*, Md. 216 A.2d 897 (1966). The Respondent failed to note, however, that in *Murray v. Comptroller of the Treasury Maryland*, supra, all houses of worship were benefitted from the tax exemption. In the case at bar, the only religious symbol the county will and does erect on the Courthouse is the Latin cross. The Respondent denies discrimination, but please see exhibit "E" attached to the Petitioner's Petition, said exhibit being the Minutes of the June 20th, 1966, meeting of the Dade County Board of Commissioners wherein it stated on page 27:

> "It was moved by Commissioner R. Hardy Matheson that a star be placed on the courthouse in lieu of the cross. This motion died for lack of a second."

On page 18 of the Respondent's Brief, the Respondent states:

> "The cross does not support any religious activity or religious institution."

We find this statement so incredible as to not warrant any response. Please note further, that on page 18 of the Respondent's Brief, the Respondent discusses *purpose*, but scrupulously avoids the *effect* of the cross; the other half of the test laid down in *Abington School District v. Schempp*, 374 U.S. 203 (1963).

The Respondent further asserts on page 19 of its brief:

> "It is well to note that in *Fowler v. State of Rhode Island*, (1953) 345 U.S. 67, this Court held that public property could be used for church services."

This is a complete misstatement of that case. This Court never ruled that public property could be used for church services. What this Court ruled is that the denial of use of the park to Jehovah Witnesses while permitting Protestants and Catholics use of the park is discriminatory and a denial of Equal Protection. The question concerning use of public property by churches was not before the Court and consequently not passed upon.

On pages 20 and 21 the Respondent states that the U.S. Supreme Court did not hold religious symbols made by school children, baccalaureate services or a religious census unconstitutional in *Chamberlain v. Dade County Board of Public Instruction* (1964) 377 U.S. 402, 12 L.Ed. 407, 84 S.Ct. 1272. Respondent failed to mention, however, that the United States Supreme Court did not pass judgment on these issues, but solely on the issues of Bible reading and prayer.

POINT III

WAS THE PETITION FOR CERTIORARI TIMELY FILED?

The County alleges that the Petitioner did not timely file his petition for Writ of Certiorari in the U.S. Supreme Court. In making this charge, the County alleges that the District Court of Appeal of Florida, Third District, was the highest court of this State in which the decision could be had, and further, that the time period for filing in the U.S. Supreme Court commenced from the decision date of the Opinion of the District Court of Appeal of Florida, Third District. The Respondent is in error on both counts.

In reference to the highest court in which a decision could be had, please note Article 5, Section 4, of the Florida Constitution which is identical to Florida Appellate Rule II (5) (b).

> "Appeals from district courts of appeal may be taken to the Supreme Court as a matter of right, only from decisions initially passing upon the validity of a state statute, a federal statute or treaty, or initially construing a controlling provision of the Florida or Federal Constitution. The Supreme Court may review by certiorari any decision of the district court of appeal that affects a class of constitutional or state officers or that passes upon a question certified by the district court of appeal to be of great public interest, or that is in direct conflict with a decision of another district court of appeal or of the Supreme Court on the same point of law, and may issue

writs of certiorari to commissions established by law."

The Petitioner sought a Writ of Certiorari in the Florida Supreme Court pursuant to this constitutional and appellate rule requirement. The Petition was denied on December 13th, 1967. Petition for Writ of Certiorari was then filed in the U.S. Supreme Court within ninety (90) days from said denial by the Florida Supreme Court. Respondent attempts to buttress its argument with the case of *Nash v. Florida Industrial Commission*, 88 S.Ct. 362. The case, however, is easily distinguished from the case at bar. In the *Nash* case, the appellant sought a Writ of Certiorari from the District Court of Appeal, said petition being denied per curiam. In the case at bar, there was no petition for a Writ filed in the District Court of Appeal, nor was there a denial to hear the case by the said District Court, nor was there a per curiam decision by the District Court. In the case at bar, the Petitioner filed an *Appeal* in the said District Court of Appeal, *the Appeal was heard, a decision was rendered on the merits, and said decision was written by Judge Swann.* It was from this decision that a Petition for Writ of Certiorari was properly filed in the Supreme Court of Florida pursuant to Article 5, Section 4, of the Florida Constitution and Rule II (5) (b) cited above.

In reference to the Respondent's companion charge, that the time period should have run from the date of the District Court of Appeal decision as opposed to the Florida Supreme Court's denial of the Petition for Writ of Certiorari, please see the opinion of Mr. Justice Holmes in *American Railway Express Co. v. Levee*, 263 U.S. 19 wherein he states:

"Of course the limit of time for applying to this Court was from the date when the writ of certiorari was refused."

Respondent ends its brief on pages 22 and 23 by stating:

"Actually Paul admits the District Court of Appeal was the highest court of this state in which the decision in this case could be had. His motion for certifying the record to this Court was filed in that Court not the Florida Supreme Court. Moreover, his petition is directed to the District Court and the Florida Supreme Court. He does not seek a review of the latter court's denial of jurisdiction but only the District Court's decision."

In answer to the charge as to the Petitioner filing his motion for certifying the record in the District Court of Appeal, the Respondent is aware that the said District Court happened to be in physical possession of the record and therefore was the only Court capable of certifying the record at that particular moment. Respondent knows this because it filed its own motion for certification in the same court.

In reference to the charge that the Petitioner seeks only review of the District Court's decision, we call attention to the opening statement found in the Petitioner's Petition for Writ of Certiorari filed in this Court, stating:

"Petitioner prays that a Writ of Certiorari issue to review the judgment of the District Court of Appeal of Florida, Third District, and the denial

of Petitioner's Petition for Writ of Certiorari by the Supreme Court of Florida, entered in the above styled case on October 3rd, 1967 and December 13th, 1967 respectively."

WHEREFORE, the Petitioner urges this Court to grant its Petition for Writ of Certiorari filed on March 9th, 1968.

Respectfully submitted

ALFRED I. HOPKINS
Attorney for Petitioner
1701 Meridian Avenue,
Miami Beach

HOWARD J. HOLLANDER
BERNARD C. PESTCOE
Of Counsel
708 City Natl. Bank Bldg.
Miami, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing reply to Respondent's Brief in Opposition to Petition for Writ of Certiorari has, pursuant to the Rules of the Supreme Court of the United States, been served by mail, upon the County Attorney. County of Dade, Florida, this 23rd day of April, 1968.

ALFRED I. HOPKINS
Attorney for Petitioner
1701 Meridian Avenue,
Miami Beach

HOWARD J. HOLLANDER
BERNARD C. PESTCOE
Of Counsel
708 City Natl. Bank Bldg.
Miami, Florida